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JUDICIAL MERIT SELECTION COMMISSION

PUBLIC FACT FINDING HEARING

Thursday, February 19, 2009

1:05 p.m.

The Gressette Building, Room 105

Columbia, South Carolina

YVONNE R. BOHANNON  
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1 MEMBERS IN ATTENDANCE:  
2  
3 REPRESENTATIVE ALAN D. CLEMMONS  
4 REPRESENTATIVE F. G. DELLENEY, JR., VICE CHAIRMAN  
5 SENATOR ROBERT FORD  
6 PROFESSOR JOHN P. FREEMAN  
7 JOHN DAVIS HARRELL, ESQUIRE  
8 REPRESENTATIVE DAVID J. MACK, III  
9 SENATOR GLENN F. McCONNELL, CHAIRMAN  
10 MS. AMY JOHNSON McLESTER  
11 SENATOR JOHN M. "JAKE" KNOTTS, JR.  
12 H. DONALD SELLERS, ESQUIRE  
13 JANE O. SHULER, CHIEF COUNSEL

14 (INDEX AT REAR OF TRANSCRIPT)  
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1                   CHAIRMAN McCONNELL: All right. Good  
2   afternoon.

3                   The Judicial Merit Selection Commission  
4   is convened today for the purpose of hearing facts  
5   related to Judge Kenneth Goode's candidacy for  
6   reelection as judge of the circuit court.  
7   Specifically on February the 11th, 2009, the  
8   General Assembly met in Joint Assembly in  
9   accordance with the terms of the concurrent  
10   resolution adopted by both houses to elect certain  
11   judges, including a judge of the circuit court at  
12   large seat eight, Judge Kenneth G. Goode. At the  
13   Joint Assembly and upon my motion, I published the  
14   following letter received from Judge Goode to the  
15   members as follows.

16                  "The State of South Carolina, Circuit  
17   Court of the Sixth Judicial Circuit, Kenneth G.  
18   Goode, Judge, February 11th. Re: Candidacy for  
19   Reelection to Judgeship.

20                  "Dear, Senator McConnell, I have read  
21   with concern the article in today's State newspaper  
22   concerning my candidacy for reelection. I  
23   understand the nature of the allegations which have  
24   been made. I further understand the allegations  
25   against me have arisen since the time of my

1     judicial screening. While I believe my decisions  
2     have been sound and appropriate in the cases  
3     reported on by the newspaper, I am also convinced  
4     it is totally unfair to the legislature for me to  
5     ask to be voted upon with the allegations pending  
6     and with the allegations not having been fully  
7     reviewed by the Screening Committee.

8                 "As you're aware, judicial ethics  
9     prevent me from publicly responding to the  
10    allegations reported in the newspaper. I find  
11    myself in a situation where I cannot do anything to  
12    refute the allegations and where the legislature is  
13    being asked to vote upon my candidacy in the face  
14    of allegations which have not been considered by  
15    the screening panel. It is important to me that  
16    all of the facts be known before I am voted upon.  
17    I am convinced that when the facts are reviewed, my  
18    conduct will be found to have been appropriate in  
19    all the cases reported upon in the newspaper.

20                "The integrity of the judicial system  
21    demands that I not be voted upon at this time. The  
22    issues raised in my opinion go to the integrity of  
23    the process and are much greater than the issue of  
24    my personal candidacy. In order that this matter  
25    be resolved in fairness to all concerned and in

1 fairness to the legislature, I ask that my  
2 candidacy be carried over and be resubmitted to the  
3 Judicial Screening Committee for full review. I  
4 look forward for this process to prove to the  
5 citizens of this great state that my judicial  
6 qualifications are beyond reproach.

7 "I thank you and the members of the  
8 General Assembly for considering this request. I  
9 am available at the State House today should anyone  
10 have any questions for me or if I can provide any  
11 assistance whatsoever. Yours very truly, Kenneth  
12 G. Goode."

13 Senator Fair then made a motion to the  
14 members of the Joint Assembly that the election to  
15 fill the position of judge of the Circuit Court at  
16 large seat eight be carried over and that the  
17 candidacy of Judge Goode be referred to the  
18 Judicial Merit Selection Commission. His motion  
19 was subsequently adopted by the members of the  
20 General Assembly. Therefore the Judicial Merit  
21 Selection Commission is convened today to hear  
22 facts regarding matters in response to the motion  
23 passed by the General Assembly.

24 Specifically that motion directs the  
25 Commission to hear matters solely on the cases

1 reported in The State newspaper on February 10th  
2 through 11th, 2008; that is, the State versus  
3 Talisha Lavette Smith and State versus Zail Ray  
4 Gavin. The purpose of this hearing today is to  
5 gather facts related to Judge Goode's handling of  
6 these matters and submit a fact finding report to  
7 the members of the General Assembly for  
8 consideration. It is not convened for the purpose  
9 of finding Judge Goode qualified or unqualified.

10 The Commission has received and  
11 considered numerous complaints filed against Judge  
12 Goode and has considered numerous affidavits of  
13 support, 49, filed in favor of Judge Goode's  
14 reelection to the bench. Staff has obtained  
15 transcripts of sentencing hearings related to the  
16 Smith and Gavin matters. All documents obtained by  
17 staff in their investigation and affidavits are  
18 before the Commission members in the notebooks that  
19 each of you have today.

20 I would like to remind the members of  
21 the public hear today to turn off your cell phones.  
22 If you have them, turn them off.

23 Before we start -- Judge, you can stay  
24 right where you are and remain comfortable for the  
25 moment.

1                   And so as to not disrupt this room, I'm  
2 going to ask that we need our staff attorneys to  
3 give us a quick briefing on the legal parameters  
4 and procedure in executive session to receive that  
5 legal advice, and then we will come out and  
6 formally deal with the hearing. And I would also  
7 ask that whoever makes this motion make it that we  
8 just meet over in my office so that all these folks  
9 can stay right where they are --

10                   PROFESSOR FREEMAN: So --

11                   CHAIRMAN McCONNELL: -- and we'll go do  
12 the moving.

13                   PROFESSOR FREEMAN: So moved.

14                   SENATOR KNOTTS: Second.

15                   CHAIRMAN McCONNELL: Professor Freeman  
16 so moves. The senator from Lexington seconds.

17                   Is there any discussion? There being  
18 no discussion, we'll proceed to a vote. All in  
19 favor please signify by saying aye. Opposed by  
20 nay. Ayes have it.

21                   Y'all just stay comfortable and we'll  
22 be right back. It shouldn't take us but a few  
23 minutes.

24                   (A recess transpired.)

25                   CHAIRMAN McCONNELL: We have just

1 completed with our attorneys going over the legal  
2 advice, and let me now address the Commission as  
3 to -- as to where we are and how we should proceed.

4 Pursuant to the statutes of South  
5 Carolina, as I understand them, once this  
6 commission has voted to qualify and that question  
7 has been presented to the General Assembly, it is  
8 not within the legal ambit of this commission to  
9 reopen the question of qualified and unqualified.  
10 That would only come back into play should a  
11 candidate withdraw or not receive the endorsement  
12 of the General Assembly.

13 The General Assembly by a resolution  
14 has instructed this commission to review the  
15 matters that have occurred since we voted and to  
16 make a report back to the General Assembly. That  
17 would be a report of the facts, complainants and  
18 the proponents on these matters and these matters  
19 only, and would not contain a set of findings from  
20 this commission as to what we agree or disagree  
21 with. It would be a report.

22 So therefore to the people who are  
23 here, those who may be complainants and those who  
24 may be proponents on other matters, you are not  
25 shut out by today's hearing. Those matters should



1 be discussed. If you think there is a complaint  
2 that a member needs to considerate at the time they  
3 vote, that is your option to talk to members of the  
4 General Assembly, and I do not want anybody to feel  
5 that we are in any way limiting your right of free  
6 speech to talk to the members of the General  
7 Assembly.

8 That also goes for those of you who  
9 have sent in affidavits who wanted to testify in  
10 favor of the judge on this matter or other matters  
11 or whatever. We will not be dealing with those.  
12 We will be dealing with the -- the limited area  
13 that is prescribed in the resolution, and therefore  
14 the testimony we take today will be confined to  
15 that, and the witnesses that will be called will be  
16 those that are relevant to that.

17 On behalf of this commission -- and I  
18 hope that all of you will agree with me that this  
19 is where we should go based upon what we understand  
20 our legal advice -- we would also thank all of the  
21 participants who came here today who were willing  
22 to step forward with this commission, that we  
23 appreciate it, and that you will have that  
24 opportunity to make your voices known in another  
25 forum, but that would be the forum as expressed

1 here.

2 And I'm going to ask this commission if  
3 that's the understanding of every single member.

4 Professor Freeman?

5 PROFESSOR FREEMAN: It's my  
6 understanding, yes, it is, sir.

7 MR. SELLERS: It's my understanding.

8 CHAIRMAN McCONNELL: Mr. Sellers?

9 MS. McLESTER: Yes, it is my  
10 understanding.

11 REPRESENTATIVE DELLENEY: Yes, sir,  
12 it's my understanding.

13 SENATOR FORD: It's my understanding.

14 REPRESENTATIVE CLEMMONS: Mine as well.

15 MR. HARRELL: It's my understanding.

16 REPRESENTATIVE MACK: It is.

17 SENATOR KNOTTS: It is.

18 CHAIRMAN McCONNELL: For the record let  
19 it be stated that this commission is in 100 percent  
20 agreement that that is the legal limitations and  
21 arrangements under which we will operate, and it is  
22 unanimously agreed to by this commission in light  
23 of the legal advice given to us.

24 SENATOR FORD: Mr. Chairman.

25 CHAIRMAN McCONNELL: Yes, sir.

1                   SENATOR FORD: Could I change seats  
2 with Mr. Delleney? This is too close for comfort.

3                   CHAIRMAN McCONNELL: You -- you like  
4 sitting here.

5                   SENATOR FORD: That's too close for  
6 comfort.

7                   CHAIRMAN McCONNELL: Is there any other  
8 matter that any other member knows of before I ask  
9 the staff -- are members comfortable with their  
10 present seating arrangements?

11                  SENATOR FORD: Yes, sir.

12                  CHAIRMAN McCONNELL: All right. With  
13 that, I will ask Judge Goode if he would come  
14 forward, please, sir.

15                  JUDGE GOODE: Yes, sir.

16                  CHAIRMAN McCONNELL: Is that light --  
17 is that on, Judge? Can you look there and see if  
18 the -- I'll get one of the sergeants to check for  
19 you and make sure everything is activated.

20                  JUDGE GOODE: I think everything is  
21 certainly adequate, yes, sir.

22                  CHAIRMAN McCONNELL: All right, sir.  
23 If -- I need to swear you in, so if you would be  
24 kind enough to raise your right hand. Do you swear  
25 to tell the truth, the whole truth, and nothing but

1 the truth, so help you God?

2 JUDGE GOODE: I do.

3 CHAIRMAN McCONNELL: Thank you, sir.

4 You're certainly welcome to make any opening  
5 statement you wish to make. What I'm planning to  
6 do -- just to kind of give you a road map, what  
7 I'll do is see if you have any opening statement.  
8 At that time I'll turn you over to our staff  
9 counsel, Ms. Shuler, and then we'll proceed and try  
10 to go through these matters and get done.

11 JUDGE GOODE: Thank you, Mr. Chairman.

12 Good afternoon. My name is Kenneth G.  
13 Goode. I presently hold Circuit Court at large  
14 seat number eight for the state of South Carolina.  
15 And I thank the Screening Committee -- Commission  
16 for allowing me to provide additional information  
17 that it seems necessary and appropriate on the two  
18 cases which were previously handled by me.

19 As a little background, I grew up in a  
20 family of modest means in Fairfield County, South  
21 Carolina, and I worked and paid my way through both  
22 undergraduate school at Furman University and the  
23 University of South Carolina School of Law. I came  
24 back to my hometown of Winnsboro to practice law,  
25 and after over 20 years of private practice, in

1 1999 I was honored to be elected to the circuit  
2 court bench.

3 I am proud to be a public servant, and  
4 I attempt to do my job with diligence. I work  
5 hard, often staying after normal court hours in  
6 order to clear every case that I can on the docket.  
7 In the ten years I have been on the bench, I have  
8 issued thousands of rulings in both civil and  
9 criminal cases, and I have imposed thousands of  
10 sentences upon criminal defendants. I'm aware of  
11 the significant publicity given recently to my  
12 rulings in two cases. On my own motion I  
13 reconsidered and altered my ruling in one of those  
14 cases. And I will be glad to address any questions  
15 this committee has about that case.

16 In the case heard in December of 2008  
17 in Richland County General Sessions Court, it has  
18 always been my intention to reconsider the sentence  
19 in that case, and this is evidenced by an order  
20 that I signed just one two to days after the  
21 sentence was issued. But I have not assigned --  
22 been assigned to Richland County since that week  
23 and have not heard it. I have read the transcript  
24 in that case, and based on the transcript, I  
25 believe the sentence needs to be reconsidered.

1           I had scheduled a hearing on the  
2 reconsideration motion for this week, but I  
3 continued that hearing to a later time. I will  
4 hold the reconsideration hearing in the future. To  
5 rule at this time would call into question the  
6 ultimate disposition and would subject -- suggest,  
7 excuse me, that disposition to a potential  
8 challenge that it was improperly influenced by  
9 political or personal considerations. The  
10 integrity of the judicial process demands that the  
11 final sentence I pronounce not be tainted by the  
12 appearance that it was motivated by an  
13 inappropriate consideration or considerations.

14           In all cases that are before me for  
15 resolution I make every effort to exercise sound  
16 judgment and do the right thing. I fully  
17 understand that justice must be served. I  
18 recognized -- I recognize the competing concepts at  
19 work within our criminal justice system, the sword  
20 of justice and the grace of mercy, and I attempt to  
21 give due consideration to both these concepts and  
22 to each sentence I impose. I am trying to impose  
23 sentences of incarceration where such sentences are  
24 appropriate, but I also attempt to give appropriate  
25 consideration to the need to show mercy.

1           I try to treat everyone -- everyone who  
2 appears before me in the same manner that I would  
3 want myself or members of my family to be treated.  
4 On the bench on the back of my name placard where  
5 only I can see it is the inscription courtesy,  
6 timeliness, and a kind heart. I try to treat  
7 everyone who appears before me with courtesy,  
8 respect, kindness and fairness. I try to weigh all  
9 the facts and circumstances of every case from all  
10 perspectives and impose a sentence both within the  
11 bounds of the law and in furtherance of the ends of  
12 justice.

13           And I will be happy to answer any  
14 questions that the Commission may have for me.

15           CHAIRMAN McCONNELL: Thank you, sir.  
16 Turn you over to our staff counsel, Ms. Jane  
17 Shuler, so we can proceed.

18           Ms. Shuler.

19           MS. SHULER: Good afternoon, Judge  
20 Goode. I want to begin with a few general  
21 questions regarding your philosophy or procedure in  
22 court. And, Judge Goode, I recognize you have  
23 sentenced thousands of defendants, but when you are  
24 sentencing a defendant who has pled guilty, please  
25 explain what factors you consider when imposing a

1 defendant's sentence.

2 JUDGE GOODE: The same factors that I  
3 consider when imposing sentence on a person who  
4 has -- has stood trial, and -- and that is the  
5 three elements that I think are appropriate:  
6 rehabilitation, deterrence and punishment. And it  
7 falls to me to formulate a combination of these  
8 different factors in coming up with a just and  
9 appropriate sentence for the facts of a particular  
10 case.

11 MS. SHULER: As a follow-up, when you  
12 are sentencing a defendant on a guilty plea who is  
13 charged with a crime of bodily injury to a victim,  
14 is it the usual procedure for the solicitor to  
15 offer medical evidence of the extent of the  
16 victim's injuries for you to consider?

17 JUDGE GOODE: That is -- that is far  
18 and away the usual procedure, and I give weight to  
19 the written medical records because those cases  
20 are -- regardless of the age of the victim, they  
21 are always of an emotional nature for everyone who  
22 is listening and caring, and so that is -- that is  
23 very helpful. It is not absolutely essential, but  
24 it is something that I typically do and -- and of  
25 course give weight to it because that's the



1 professional's opinion on the condition of the  
2 victim after a crime.

3 MS. SHULER: Yes, sir. In those  
4 circumstances where you don't have the medical  
5 evidence offered to you, generally what is the  
6 testimony and evidence generally offered to  
7 establish the victim's injuries which you will  
8 consider in imposing the defendant's sentence?

9 JUDGE GOODE: As with many things that  
10 are within my judicial discretion, that is one of  
11 them, and it's something that I must listen to what  
12 the solicitors have to say, what the victims have  
13 to offer, what the defendant has to offer, and come  
14 with a conclusion when there's no -- or very little  
15 written information for me to rely on. Of course  
16 it's much easier for me to assess the amount of  
17 damage when I have professional opinions about the  
18 injuries, and so when they are available, I give  
19 them great weight.

20 MS. SHULER: Thank you.

21 Turning to the specific cases before us  
22 today, I would like to begin with the case of State  
23 of South Carolina versus Talisha Smith in which you  
24 were the judge and heard her guilty plea and  
25 sentenced her on December 8, 2008. Judge Goode,

1 I'm going to have a document handed to you and ask  
2 you if you recognize that document.

3 JUDGE GOODE: Yes, ma'am, I do.

4 MS. SHULER: Is that the transcript of  
5 record from the guilty plea and sentencing hearing  
6 in the Smith matter on December 8th, 2008?

7 JUDGE GOODE: Without completely  
8 reading the document, that is -- that is exactly  
9 what it appears to be.

10 MS. SHULER: Mr. Chairman, I would like  
11 to offer that transcript of record as an exhibit to  
12 the record today.

13 CHAIRMAN McCONNELL: Any objection by  
14 any committee members? Being none, so ordered.

15 (EXH. 1, Transcript of Record for State  
16 vs. Talisha Lavette Smith Dated December 8, 2008,  
17 marked for identification.)

18 JUDGE GOODE: I stated earlier I have  
19 read that transcript, and within one to two days  
20 after the sentence, I signed an order that I would  
21 reconsider. And that reconsideration has not taken  
22 place yet, but I think it's an appropriate case for  
23 a reconsideration.

24 MS. SHULER: Thank you, Judge Goode.

25 I have another document to hand to you

1 and ask if you would recognize that document.

2 JUDGE GOODE: Yes, ma'am, I do. This  
3 is the sentencing sheet that involves the case that  
4 we are presently discussing.

5 MS. SHULER: Senator McConnell, I'd  
6 like to offer that as an exhibit for the record.

7 CHAIRMAN McCONNELL: Any committee  
8 member, any objection? None. So ordered.

9 (EXH. 2, Sentence Sheet for State vs.  
10 Talisha Lavette Smith, marked for identification.)

11 MS. SHULER: Judge Goode, what was your  
12 sentence for Ms. Smith on December 8th?

13 JUDGE GOODE: My sentence was ten years  
14 suspended on five years probation, special  
15 condition of probation where she received child  
16 abuse counseling and such other counseling as the  
17 Department of Probation and Parole deemed  
18 appropriate.

19 MS. SHULER: Judge Goode, are there any  
20 general comments that you would like to offer to  
21 the Commission regarding your philosophy with  
22 respect to the Smith case?

23 JUDGE GOODE: Well, I'm a little, as we  
24 would say in Fairfield County, ham strung, because  
25 this opinion case, and I'm extraordinarily limited

1 in comments that I can make, but as I indicated  
2 earlier, I have read the transcript. I think it  
3 is -- and I have signed an order that I will  
4 resentence in that case, and I feel that it is an  
5 appropriate case for resentencing.

6 MS. SHULER: Thank you.

7 CHAIRMAN McCONNELL: Let me ask the  
8 members of the Commission, counsel has just asked  
9 me and I have asked the vice chairman, so we can  
10 kind of keep these things organized, what we do is  
11 we'll stop with this -- at this point, Judge Goode,  
12 with the Smith matter, take the complainants -- the  
13 witnesses in this matter and then come back to the  
14 judge for the other matter. Is that acceptable  
15 with members of the Commission?

16 PROFESSOR FREEMAN: So moved.

17 SENATOR FORD: Second.

18 CHAIRMAN McCONNELL: Moved and  
19 seconded. Open for discussion.

20 SENATOR KNOTTS: Chairman.

21 CHAIRMAN McCONNELL: The senator from  
22 Lexington.

23 SENATOR KNOTTS: At what point will we  
24 be able to ask Judge Goode some questions?

25 CHAIRMAN McCONNELL: You're going to be

1     able to ask him -- what I would propose is that if  
2     you want to, we'll ask him on this matter so we  
3     keep the two separate so that all of us don't start  
4     getting things crossed up between the two things,  
5     and as soon as I finished getting this straight, I  
6     was going to see if any of y'all had any questions.

7                     Any further discussion on Professor  
8     Freeman's motion? There being none, we'll go  
9     immediately to a vote.

10                    All in favor please raise your right  
11     hand. Thank you. Opposed by a like sign or  
12     extensions. There being none, let the record show  
13     that it was unanimous by the Commission to proceed  
14     in that direction.

15                    Now I'll ask, do any members of the  
16     Commission at this point have any questions?

17                    Senator from Lexington.

18                    SENATOR KNOTTS: Thank you,  
19     Mr. Chairman.

20                    Judge Goode, in this matter there was  
21     some -- a question asked to you by counsel a little  
22     bit ago about medical records, and having been  
23     involved in the court system, I understand the  
24     plea -- the way pleadings are taken and all. In  
25     this particular case, was there any written legal

1 document stating to you the condition of -- of the  
2 injury?

3 JUDGE GOODE: Senator Knotts, my  
4 recollection is that there was the admission notes  
5 from a emergency care facility, sometimes referred  
6 to as a doc in the box, and there was some  
7 photographs that were put forward, but --

8 SENATOR KNOTTS: But no formal written  
9 report?

10 JUDGE GOODE: No, sir. The admission  
11 notes were a paragraph of about three inches single  
12 spaced. I do not remember the name of the medical  
13 professional who signed it. But that was either on  
14 the night of their discovery of the injury or the  
15 next day.

16 SENATOR KNOTTS: And usually where  
17 there's serious injury, there's usually a full  
18 report given to back up that injury in most cases,  
19 would you say?

20 JUDGE GOODE: Yes, sir. That is --  
21 that is typically the case, but in all fairness to  
22 the solicitor's office, it is my understanding that  
23 the solicitor who normally handles this case was on  
24 maternity leave and there was someone in her stead.

25 SENATOR KNOTTS: Do you know -- were

1     you involved -- informed how long that case had  
2     been in the hands of the solicitor's office prior  
3     to bringing it to trial when the -- it actually  
4     occurred?

5             JUDGE GOODE: I definitely would have  
6     had the date that it actually occurred. How long  
7     it had been in the solicitor's office, if I had  
8     that information, I do not recall it.

9             SENATOR KNOTTS: And how long did that  
10    plea proceeding last in your -- in your courtroom?

11            JUDGE GOODE: I would -- I did a very  
12    thorough examination of the defendant because it  
13    was a very serious charge, and my -- my guess would  
14    be along the lines of 30 minutes.

15            SENATOR KNOTTS: And when did the  
16    offense occur?

17            JUDGE GOODE: The offense occurred --  
18    the case came before me in December of '08, if  
19    memory serves me correctly, and I believe that the  
20    offense occurred approximately between six months  
21    and a year prior to that.

22            SENATOR KNOTTS: Okay. Thank you.

23            CHAIRMAN McCONNELL: Any other  
24    questions?

25            Professor.

1                   PROFESSOR FREEMAN: Yeah. Judge, at  
2 the sentencing hearing or prior to that time, had  
3 the state ever offered any evidence -- admissible  
4 evidence concerning the permanency of any injuries  
5 suffered by the victim?

6                   JUDGE GOODE: No, sir.

7                   PROFESSOR FREEMAN: Thank you.

8                   CHAIRMAN McCONNELL: The senator from  
9 Charleston.

10                  SENATOR FORD: Judge, the -- did the  
11 state present -- in your earlier comments -- in  
12 your letter you put a lot of weight on expert  
13 witnesses. Did the state offer any expert  
14 witnesses?

15                  JUDGE GOODE: No, sir.

16                  SENATOR FORD: Not one?

17                  JUDGE GOODE: No, sir.

18                  SENATOR FORD: So all you had to go on  
19 was the information that you shared with Senator  
20 Knotts?

21                  JUDGE GOODE: That's correct. My  
22 recollection is that the father who was dressed in  
23 full Army attire -- and I complimented him for  
24 serving our country. That seemed to have gotten  
25 twisted somehow. I don't know, but it was meant



1 strictly as a compliment. I compliment all  
2 servicemen when they're in my courtroom. And  
3 the -- the mother, who was only quite naturally  
4 upset, spoke and the --

5 SENATOR FORD: She was upset about the  
6 uniform or upset about what?

7 JUDGE GOODE: She was upset about the  
8 child.

9 SENATOR FORD: Okay.

10 JUDGE GOODE: And -- and the -- and  
11 then the solicitor spoke. The defense attorney  
12 spoke, and the solicitor -- there was a little back  
13 and forth in -- in that sentence.

14 SENATOR FORD: Okay, Judge, the  
15 solicitor -- now, this solicitor -- how much time  
16 had this particular solicitor had with the case  
17 prior to coming to court, do you know?

18 JUDGE GOODE: No, sir.

19 SENATOR FORD: Did you say there was  
20 another solicitor who had the case and she was on  
21 maternity leave?

22 JUDGE GOODE: I do not have that  
23 information, sir.

24 SENATOR FORD: Were you -- was it  
25 strange that they didn't have any expert witnesses?

1 JUDGE GOODE: It is not unusual with a  
2 serious injury for there to be expert medical  
3 testimony and evidence.

4 SENATOR FORD: You said it's not what?

5 JUDGE GOODE: It's not unusual.

6 SENATOR FORD: For them not to?

7 JUDGE GOODE: For -- for them to  
8 present when there's a serious injury, as this  
9 one -- there was lay -- lay testimony that -- that  
10 it was, to have medical evidence to support it.

11 SENATOR FORD: Okay. Judge, I'm -- I'm  
12 not clear on your answer. Are you saying it's not  
13 unusual for them in a serious case not to have an  
14 expert witness?

15 JUDGE GOODE: No, sir. I apologize if  
16 I was not clear. It is not unusual for them to  
17 have an expert witness. It would be more unusual  
18 for them not to have one, as was the case in this  
19 situation.

20 SENATOR FORD: Okay. Let me ask you a  
21 question on that. The system -- did -- the  
22 solicitor presented to you a fair analysis of  
23 injury based on the fact that they didn't have an  
24 expert witness?

25 JUDGE GOODE: Senator, I have not

1 reviewed medical evidence to this point.

2 SENATOR FORD: Uh-huh.

3 JUDGE GOODE: And I've been reading the  
4 rules on reconsideration about whether or not I can  
5 receive additional evidence at a reconsideration.  
6 And there's a conflict between the -- the sources  
7 that I have to rely on, but I think under  
8 extraordinary circumstances that they would be able  
9 and allowed to present additional documentation as  
10 to the extent of her injury.

11 SENATOR FORD: My last question is --

12 JUDGE GOODE: But it -- and, Senator  
13 Ford, I certainly hate to interrupt you, but the  
14 defendant admitted the injury.

15 SENATOR FORD: Okay. My last question.  
16 Now, you were saying in your -- in your letter and  
17 in your opening, you had on your plaque behind your  
18 desk -- I mean, on your name tag you had three  
19 slogans, and it was what?

20 JUDGE GOODE: Three words.

21 SENATOR FORD: Uh-huh.

22 JUDGE GOODE: Courtesy, timeliness, and  
23 a kind heart. That's what I look at.

24 SENATOR FORD: Well, some of the three  
25 times I went to jail, I hoped I had a judge like

1     that.

2                   CHAIRMAN McCONNELL:   Any other  
3     questions?

4                   The senator from Lexington.

5                   SENATOR KNOTTS:   Thank you,  
6     Mr. Chairman.

7                   In the event of a resentencing, are --  
8     did I hear you say that the -- that you think that  
9     the solicitor or the defendant's attorney can  
10    present new evidence at that resentencing for your  
11    consideration?

12                  JUDGE GOODE:   That is a decision that I  
13    have not reached yet.   I've read on that and some  
14    sources say that I can and some say under  
15    extraordinary circumstances -- or some say that I  
16    can't, and some say that under extraordinary  
17    circumstances I can, and I've got to find more of a  
18    definition of what is considered to be  
19    extraordinary circumstances.

20                  SENATOR KNOTTS:   And I believe that the  
21    only resentencing -- according to the canons and  
22    according to court orders, the only time a judge  
23    can resentence is when that judge is back in that  
24    circuit.   Is that the way it still is?

25                  JUDGE GOODE:   That -- that is I think

1 in the canons and in the rules, but with an order  
2 from court administration, then I can hear it in  
3 another county.

4 SENATOR KNOTTS: And has the court  
5 given any indication of allowing you to hear it  
6 another county or are you going to be able to  
7 reconsider it when you get back --

8 JUDGE GOODE: They --

9 SENATOR KNOTTS: -- in Richland County?

10 JUDGE GOODE: They did authorize that I  
11 come to Richland, which is about 25 miles away, and  
12 hear it this week, and after further consideration,  
13 I felt that it might have the appearance of  
14 impropriety to have that hearing with this hearing  
15 pending, and so Fairfield -- or Winnsboro I don't  
16 see as a logistical problem, and I will likely just  
17 ask if I can have jurisdiction for a day in  
18 Richland and have it sentenced there.

19 Everyone wants this resolved, including  
20 me, but I felt that it would be inappropriate after  
21 all of these -- media attention to have it prior to  
22 this hearing.

23 SENATOR KNOTTS: Having worked in the  
24 solicitor's office and prepared cases for trials  
25 and pleas in Richland County in the solicitor's

1 office -- and I don't think it's changed that  
2 much -- I know the importance of providing the  
3 judge -- the presiding judge with as much  
4 information as possible to -- to allow him the  
5 ability to make a fair and just sentence,  
6 regardless what it is, is very important in most  
7 criminal case -- in all criminal cases because the  
8 solicitor's office -- and law enforcement made the  
9 case and turned it over and sit down with the  
10 solicitor's office for -- for analysis and for  
11 preparing it for trial, and sometimes cases are in  
12 the solicitor's office for two, three months, six  
13 months, sometimes a year to get it ready to go  
14 before a judge.

15 And I believe you said earlier -- you  
16 said it was approximately 30 minutes that you had  
17 the privilege of understanding what went on in this  
18 case?

19 JUDGE GOODE: Yes, sir. I advised the  
20 defendant of -- of her rights and made sure that  
21 she understood. I read specifically to her the  
22 charges and any possible punishment and first asked  
23 if the facts were correct. She answered in the  
24 affirmative and -- and then as she plead guilty she  
25 indicated that she did.

1                   SENATOR KNOTTS:  Were there any  
2   recommendations by the solicitor's office made in  
3   this case as to a plea negotiation?

4                   JUDGE GOODE:  No, sir.

5                   SENATOR KNOTTS:  Had this been a -- had  
6   you been informed by the solicitor that this was a  
7   case like it's been proposed in The State newspaper  
8   and the seriousness of this, don't you rely -- feel  
9   like that there would have been a strong  
10  recommendation by the solicitor's office one way or  
11  the other, for either jail time or -- or a stiffer  
12  sentence?

13                  JUDGE GOODE:  Yes.

14                  SENATOR KNOTTS:  That's the way it  
15  usually works, isn't it?

16                  JUDGE GOODE:  Yes, sir.  And this case  
17  was pre-tried in chambers.

18                  SENATOR KNOTTS:  Was any law  
19  enforcement officers that investigated the case  
20  standing before you at the time of sentencing?

21                  JUDGE GOODE:  No, sir.

22                  SENATOR KNOTTS:  In cases where the  
23  state has --

24                  JUDGE GOODE:  Not -- not to my  
25  recollection.

1                   SENATOR KNOTTS: In cases where the  
2     stale has a real interest in putting someone in  
3     jail or getting a stiff sentence for them, is it  
4     not usually in the sentencing trial -- sentencing  
5     phase that the state provide any and all witnesses  
6     and victims that are interested in this case and  
7     give them the ability to say something at the  
8     sentencing as a plea?

9                   JUDGE GOODE: It -- it varies from  
10    locale to locale, but it is not at all unusual,  
11    especially on -- in a serious case.

12                  SENATOR KNOTTS: So you had a case  
13    before you that there was no testimony of a person  
14    standing there from the law enforcement arena to  
15    testify as to the seriousness of the case. You had  
16    no medical records written to present to you that  
17    was legal documents. You had no solicitor standing  
18    there and shouting to put this person in jail.

19                  JUDGE GOODE: Well, in the courtroom,  
20    she, she being the solicitor, at that time asked  
21    for a substantial sentence.

22                  SENATOR KNOTTS: For a substantial  
23    sentence. Was that a substantial sentence in  
24    probation or substantial jail time?

25                  JUDGE GOODE: I don't -- in my mind's



1 eye, it was in jail time.

2 SENATOR KNOTTS: Okay. And you have a  
3 solicitor that was handling the case because the  
4 assistant -- the assistant solicitor that was  
5 hand -- assigned the case was on maternity leave?

6 JUDGE GOODE: I am so informed.

7 SENATOR KNOTTS: And with that  
8 information, that's what you based your sentence  
9 on?

10 JUDGE GOODE: Yes, sir.

11 SENATOR KNOTTS: Thank you.

12 CHAIRMAN McCONNELL: Any other members?  
13 Mr. Sellers.

14 MR. SELLERS: Judge Goode, I want to be  
15 sure I understand the timing. After you imposed  
16 sentence, the prosecutor filed a motion for you to  
17 reconsider it?

18 JUDGE GOODE: Yes, sir. All -- almost  
19 immediately. If -- if not that day, the next, and  
20 if not the next, then the next. It was no more  
21 than two days.

22 MR. SELLERS: And you granted that  
23 motion right away?

24 JUDGE GOODE: Immediately, yes, sir.

25 SENATOR KNOTTS: Mr. Chairman.

1                   CHAIRMAN McCONNELL: Any other  
2 questions?

3                   SENATOR KNOTTS: I want to make sure I  
4 understood that.

5                   Was it a motion asked for by the  
6 solicitor to reconsider or was it a motion to -- on  
7 your own motion?

8                   JUDGE GOODE: It was -- it was the  
9 state's motion to reconsider.

10                  SENATOR KNOTTS: The state's motion,  
11 okay.

12                  CHAIRMAN McCONNELL: Representative.

13                  REPRESENTATIVE DELLENEY: Judge Goode,  
14 what were the conversations in pretrial in regard  
15 to sentence, if you remember?

16                  JUDGE GOODE: I don't have a  
17 recollection except I do not recall there being any  
18 recommendation of a particular range that the  
19 solicitor felt was appropriate.

20                  REPRESENTATIVE DELLENEY: And in  
21 serious cases, those recommendations are ordinarily  
22 made both in pretrial and out in public at the  
23 sentencing?

24                  JUDGE GOODE: Yes, sir.

25                  CHAIRMAN McCONNELL: Any other

1 questions from the Commission?

2 I think Ms. Shuler had a clarifying --  
3 she had one other question.

4 MS. SHULER: Yes, sir.

5 Judge Goode, did you set this matter  
6 for hearing or plea, or was this matter set on your  
7 schedule by the solicitor's office?

8 JUDGE GOODE: It was set by the  
9 solicitor's office. You're speaking of the guilty  
10 plea?

11 MS. SHULER: Yes, sir.

12 JUDGE GOODE: Yes, ma'am. The  
13 solicitor controls the docket in Richland County as  
14 far as I know. I know they've had some changes in  
15 their method, but I think the solicitor still is in  
16 control of the docket.

17 CHAIRMAN McCONNELL: All right. Thank  
18 you, sir. If you want to take a seat, we'll  
19 proceed forward, get the other witnesses in this  
20 matter and then come to the next matter. And we'll  
21 come back to you after we've heard from the  
22 witnesses before we go to the next matter.

23 JUDGE GOODE: Yes, sir. If I could  
24 make one very brief statement.

25 CHAIRMAN McCONNELL: Yes, sir.

1 JUDGE GOODE: And that would be to the  
2 father of the child. And I don't recognize him not  
3 having a uniform on.

4 Are you the sergeant.

5 MR. GADDIE: Correct.

6 JUDGE GOODE: If -- if I somehow in my  
7 comments offended you, then I must have not spoken  
8 clearly because I was complimenting you on  
9 defending our country. I start every term of court  
10 with the pledge of allegiance, and every time  
11 there's an active duty military person in my  
12 courtroom, I stop the proceedings and I thank them  
13 for what they're sacrificing for the country. And  
14 if I stumbled through that in some way that caused  
15 you -- insulted your wife, embarrassment, then I  
16 just hope you'll accept my apologies.

17 CHAIRMAN McCONNELL: All right. We'll  
18 proceed now to the next witness.

19 Ms. Shuler, who you would call?

20 MS. SHULER: Patrick Gaddie, please.

21 CHAIRMAN McCONNELL: Mr. Gaddie, if  
22 you'd come forward, please, sir. Make yourself  
23 comfortable there, and if you'd be so kind as to  
24 raise your right hand. Do you swear to tell the  
25 truth, the whole truth, and nothing but the truth,

1     so help you God?

2                   MR. GADDIE:    I do.

3                   CHAIRMAN McCONNELL:   Thank you, sir.

4     Please answer any questions that Ms. Shuler might  
5     have for you.

6                   MS. SHULER:   Mr. Gaddie, you have filed  
7     an affidavit with the Commission, and I am going to  
8     ask Ms. Traywick to hand you a copy and ask if you  
9     could identify it.

10                  MR. GADDIE:    Yes.

11                  MS. SHULER:    I would like to have that  
12     marked as an exhibit.

13                  CHAIRMAN McCONNELL:   Any objection by  
14     any member of the Commission?   Being none, so  
15     ordered.

16                  (EXH. 3, Witness Affidavit Form of  
17     Patrick E. Gaddie, marked for identification.)

18                  MS. SHULER:    Mr. Gaddie, in summary,  
19     your affidavit alleges that Judge Goode made some  
20     statements during the sentencing hearing of  
21     Ms. Smith that were offensive to your wife and you  
22     as a spouse of a U.S. Army soldier, and you feel  
23     that those comments showed bias and might have been  
24     a factor in Smith -- his sentence of Ms. Smith.  
25     You also felt that the sentence that he imposed was

1 not a very fair sentence and that he was concerned  
2 more about hurting the defendant and hurting --  
3 than punishing her.

4 Is there anything in addition that you  
5 would like to add to your affidavit?

6 MR. GADDIE: Yes, ma'am. Senator  
7 McConnell and members of the Commission, thank you  
8 for hearing us today. Thank you from the family.  
9 As a service member, being elected officials  
10 there's only so much I can say. I come here  
11 speaking for my daughter Kendra, proud father.

12 I just want to let the -- let everybody  
13 know just how serious an injury this was and why we  
14 feel this was a very lenient punishment for Talisha  
15 Smith. Keep in mind this is one month short of  
16 being a year after this happened to my daughter  
17 Kendra. This is the Jill Eversmann, the speech  
18 language pathologist that's working with my  
19 daughter, this is her assessment as of two days  
20 ago. Excuse me.

21 "Kendra completes this quarter having  
22 met six out of 11 goals. She demonstrates age  
23 appropriate attention skills, follows a few simple  
24 one-step commands, localizes sounds, and plays  
25 appropriately with toys. She produces nine signs

1 either by imitation or spontaneously. They include  
2 apple, baby, book, ball, dog, eat, help, more and  
3 shoes.

4 "Speech is progressing at a much slower  
5 rate. Kendra is not yet imitating consonants,  
6 vowels, syllables or words. Spontaneously she has  
7 produced two words, dada and bubble. She often  
8 communicates with gestures or actions. She might  
9 take the other person's hand and put it on the toy  
10 she needs help with.

11 "She continues to wear a bib now due to  
12 drooling, and it continues to be a present problem  
13 due to the traumatic brain injury that she received  
14 in March."

15 So I just want to say thank you for  
16 hearing my family and just to let everyone know  
17 just how serious great bodily injury to a child is.  
18 It's not something -- it's not a slap on the hand.  
19 It is a life changing injury to children. And  
20 subject to your questions, that's all I have.

21 CHAIRMAN McCONNELL: Any member of the  
22 Commission have a question?

23 The senator from Lexington.

24 SENATOR KNOTTS: Mr. Gaddie, I really  
25 feel for -- for what your family has been through,

1 but I'm trying to get to the bottom of where the  
2 communications went lacking as to the seriousness  
3 of this child's injury. Whenever it first happened  
4 was it -- what agency investigated it?

5 MR. GADDIE: Initially, sir, we went to  
6 the hospital, and they -- the hospital physician  
7 did the MRI and found intercranial hemorrhages  
8 and --

9 SENATOR KNOTTS: What law enforcement  
10 agency made the report and investigated it?

11 MR. GADDIE: It's Richland County.

12 SENATOR KNOTTS: Sheriff's department?

13 MR. GADDIE: Sheriff's department, yes.  
14 Investigator Richard Carter.

15 SENATOR KNOTTS: Did you -- after  
16 Mr. Carter came to you and -- and found the  
17 evidence of what had happened, you got a warrant  
18 for this person's arrest?

19 MR. GADDIE: Yes, but it was a couple  
20 days later. It was --

21 SENATOR KNOTTS: A couple days later?

22 MR. GADDIE: Uh-huh.

23 SENATOR KNOTTS: Okay. Do you know if  
24 the investigator talked with the doctors or  
25 hospital?



1 MR. GADDIE: Yes. As a matter of fact,  
2 Senator, he -- he met us at the hospital.

3 SENATOR KNOTTS: Met you at the  
4 hospital.

5 MR. GADDIE: He was there -- when I got  
6 off the ambulance holding my daughter, he was there  
7 talking with the doctors.

8 SENATOR KNOTTS: And once you went  
9 through the procedures and got it as far as the  
10 solicitor's office, I'm sure a crime -- a victim's  
11 assist -- witness assistant contacted you?

12 MR. GADDIE: Yes, sir. Jan Knobles  
13 from the solicitor's --

14 SENATOR KNOTTS: Jan Knobles?

15 MR. GADDIE: Uh-huh.

16 SENATOR KNOTTS: And she kept you  
17 informed on the case of where it was at, who was  
18 handling it?

19 MR. GADDIE: Right. Exactly.

20 SENATOR KNOTTS: Okay. Did you meet  
21 with the solicitor -- or assistant solicitor?

22 MR. GADDIE: Yes. Yes, I did.

23 SENATOR KNOTTS: How many times did you  
24 meet with them over what period of time?

25 MR. GADDIE: Pretty regularly

1 initially. Probably once a week we met with --  
2 Anna Good was the initial solicitor that was  
3 handling the case, and Jan Knobles was our victim's  
4 advocate the whole time --

5 SENATOR KNOTTS: Okay. And -- and they  
6 knew the seriousness of the -- the injuries to this  
7 child?

8 MR. GADDIE: Yes, they did. They had a  
9 very thick packet, as a matter of fact, of the  
10 medical record. Very thick packet, pictures, all  
11 the MRIs, very thick packet of medical --

12 SENATOR KNOTTS: So they had plenty of  
13 medical evidence --

14 MR. GADDIE: Yes, they did.

15 SENATOR KNOTTS: -- that they could  
16 have presented at this trial --

17 MR. GADDIE: Yes.

18 SENATOR KNOTTS: -- for the judge's  
19 review if they so choose?

20 MR. GADDIE: Yes.

21 SENATOR KNOTTS: Okay. Did -- did you  
22 ever have a discussion with them about a plea  
23 negotiation?

24 MR. GADDIE: Just to be honest with  
25 you, Senator, Michelle and I said we personally

1 would want no plea. We wanted no plea. We want --  
2 SENATOR KNOTTS: You -- you --  
3 MR. GADDIE: -- we wanted her to try to  
4 go to jail. That's what we wanted.  
5 SENATOR KNOTTS: You insisted there --  
6 MR. GADDIE: Yes.  
7 SENATOR KNOTTS: -- not be a plea?  
8 MR. GADDIE: Yes.  
9 SENATOR KNOTTS: You were -- you and  
10 your wife was willing to go to a jury trial if  
11 necessary?  
12 MR. GADDIE: Yes.  
13 SENATOR KNOTTS: Okay. Did they ever  
14 indicate to you that there was any type of problem  
15 with the case if they went to a jury trial?  
16 MR. GADDIE: No. They -- very strong  
17 case -- quote/unquote, very strong case, that it  
18 wouldn't be a problem if we went to trial.  
19 SENATOR KNOTTS: Did you know at the  
20 time that they set the docket for which judge that  
21 the case would go before?  
22 MR. GADDIE: I wasn't exactly sure  
23 which one it was.  
24 SENATOR KNOTTS: Okay. Did -- did you  
25 insist on a jury trial?

1 MR. GADDIE: No, we did not. No, we  
2 did not. They -- we were told she'd probably plead  
3 guilty, but the jury trial was a possibility.

4 SENATOR KNOTTS: Did they ensure --  
5 assure you that after the guilty plea that they  
6 would push as hard as they could to get that person  
7 jail time?

8 MR. GADDIE: Yes.

9 SENATOR KNOTTS: That's what the  
10 solicitor --

11 MR. GADDIE: Yes.

12 SENATOR KNOTTS: Would you agree that  
13 at the trial that the medical records was not  
14 presented to the judge for his consideration and be  
15 able to be read? Did you see it passed up to him?

16 MR. GADDIE: To be honest with you,  
17 there was things passed to him, and I thought it  
18 was everything that we had seen --

19 SENATOR KNOTTS: Talking about that  
20 pack that you said was that thick?

21 MR. GADDIE: That pack.

22 SENATOR KNOTTS: Did you see that  
23 passed up to him?

24 MR. GADDIE: Yes.

25 SENATOR KNOTTS: At the trial -- in the

1 courtroom?

2 MR. GADDIE: In the courtroom there was  
3 stuff passed to him. I'm not sure if it was the  
4 exact same packet.

5 SENATOR KNOTTS: Okay. Well, the  
6 judge -- you heard his testimony a few moments  
7 ago -- said that there was -- there was papers  
8 stating that the child had injuries, but it wasn't  
9 a detailed written report that -- that stated the  
10 full extent of that child's -- seriousness of his  
11 injuries. Would you agree with that statement?

12 MR. GADDIE: That -- that's what he --  
13 that's what the judge said. It was -- it was --  
14 initially before everything even started, the  
15 solicitor and the judge were back in chambers  
16 talking, so what -- Michelle and I, having never  
17 dealt with anything like this, thought they were  
18 going over all the evidence and everything that was  
19 there. So I'm not sure how it works.

20 SENATOR KNOTTS: Okay. At what point  
21 in time did you -- did you get a chance to talk at  
22 the plea hearing?

23 MR. GADDIE: I did -- I did get a  
24 chance, sir.

25 SENATOR KNOTTS: Did you get a

1 chance -- do you feel you got a chance to say  
2 anything you wanted to say?

3 MR. GADDIE: I could have spoken.

4 SENATOR KNOTTS: Did you?

5 MR. GADDIE: No, I did not.

6 SENATOR KNOTTS: You didn't speak?

7 MR. GADDIE: No, I did not.

8 SENATOR KNOTTS: Did your wife speak?

9 MR. GADDIE: My wife spoke. My wife  
10 spoke very eloquently, as a matter of fact.

11 SENATOR KNOTTS: Anybody else -- did  
12 the solicitor bring any other -- any doctors or --

13 MR. GADDIE: Nobody else was there.  
14 The --

15 SENATOR KNOTTS: Nobody else was there.

16 MR. GADDIE: -- the victim's  
17 advocate -- it was our understanding the fact that  
18 she was pleading guilty that we didn't need all the  
19 witnesses there, that the -- all the information  
20 before the judge was enough, the fact that she was  
21 pleading guilty.

22 SENATOR KNOTTS: But you do realize now  
23 that in order for a judge to make a decision even  
24 if the person is pleading guilty, he has to have  
25 all the pertinent facts to that case in order to

1     make a good decision to make sure justice is  
2     served?

3                     MR. GADDIE:   Yes.

4                     SENATOR KNOTTS:  Do you feel like if we  
5     were -- if a doctor had been there to explain the  
6     seriousness of those injuries and a police officer  
7     that investigated the case had been there to at  
8     least state what he had found in his investigation,  
9     that the -- that would have been more information  
10    that would have been considered for maybe a better  
11    outcome?

12                    MR. GADDIE:   Yes.

13                    SENATOR KNOTTS:  Thank you.

14                    CHAIRMAN McCONNELL:  The senator from  
15    Charleston.

16                    SENATOR FORD:  Mr. -- Anna Good did not  
17    show up in court, right?

18                    MR. GADDIE:  Correct, sir, she did not.

19                    SENATOR FORD:  The solicitor that  
20    showed up, how much time y'all had to work with  
21    her?

22                    MR. GADDIE:  A few weeks, Senator.

23                    SENATOR FORD:  How many times y'all  
24    visit -- I mean, met with her?

25                    MR. GADDIE:  Four or five times,

1 Senator.

2 SENATOR FORD: Okay. Was she -- was  
3 she -- did she -- did Ms. Good make her aware of  
4 all the things that had happened prior to -- when  
5 did -- when did this case started with -- with  
6 Ms. Good -- I mean, Ms. -- yeah, Good?

7 MR. GADDIE: It started immediately  
8 following the -- the incident.

9 SENATOR FORD: And when was that?

10 MR. GADDIE: March -- March of '08.

11 SENATOR FORD: March?

12 MR. GADDIE: Yes.

13 SENATOR FORD: And y'all were with  
14 Ms. Good for how long?

15 MR. GADDIE: The entire time for the  
16 next --

17 SENATOR FORD: And then the new  
18 solicitor came in?

19 MR. GADDIE: Yes.

20 SENATOR FORD: But that wouldn't be the  
21 tail end. That would be -- how -- you said you had  
22 sufficient time to work with her?

23 MR. GADDIE: Right, sir.

24 SENATOR FORD: Okay. So -- well, were  
25 you surprised on the type of case she presented in



1 court, the fact that she didn't bring her expert  
2 witness?

3 MR. GADDIE: No, no, no. We honestly  
4 thought that the evidence that was presented was  
5 enough, so she --

6 SENATOR FORD: Presented by the  
7 solicitor?

8 MR. GADDIE: Right, Senator.

9 SENATOR FORD: Okay. So she presented  
10 to the -- she described the injuries to the judge?

11 MR. GADDIE: Yes. Oh, yes.

12 SENATOR FORD: And you -- and it was  
13 dramatic enough that you would think the judge  
14 would understand without the expert witness?

15 MR. GADDIE: Yes.

16 SENATOR FORD: All right.

17 CHAIRMAN McCONNELL: Any other  
18 questions?

19 Representative Clemmons.

20 REPRESENTATIVE CLEMMONS: Thank you,  
21 Mr. Chairman.

22 Sergeant, thank you for being with us.  
23 Thank you for helping us compile a record here to  
24 present to the legislature when it comes to the  
25 election of Judge Goode.

1                   The question I have for you, Sergeant,  
2   is with regard to your perception of Judge Goode's  
3   temperament, particularly his respectfulness or  
4   lack thereof towards you and your wife, could you  
5   comment on that.

6                   MR. GADDIE:   He's -- he's a judge.

7                   REPRESENTATIVE CLEMMONS:   Was he  
8   respectful to you, Sergeant?

9                   MR. GADDIE:   In my interpretation more  
10   worried about the -- the guilty than the Gaddie  
11   family as a whole.

12                  REPRESENTATIVE CLEMMONS:   Was there  
13   anything objective that you could point us to in  
14   his remarks or his actions towards you that leads  
15   you to that -- that interpretation?

16                  MR. GADDIE:   Just the -- just my  
17   interpretation, sir, is just he was more worried  
18   about her than us.   He was more worried about  
19   anything he might do that might hurt her family,  
20   anything he might say to break her family up.   I  
21   thought we were there for a different reason.   I  
22   thought we were there to punish her for what she  
23   did to our family, to my daughter.   That's just my  
24   interpretation.

25                  REPRESENTATIVE CLEMMONS:   Okay.

1 Specifically with regard to remarks that she may  
2 have made to you -- that the judge may have made to  
3 you or your wife, were -- were the remarks that  
4 were made appropriate?

5 MR. GADDIE: Again, interpretation.  
6 "There's some wrongs that can't be made right."

7 REPRESENTATIVE CLEMMONS: Are -- are  
8 you quoting --

9 MR. GADDIE: I'm quoting.

10 REPRESENTATIVE CLEMMONS: Okay.

11 MR. GADDIE: "There's some wrongs that  
12 can't be made wrote," end quote. I disagree.  
13 That's why we're here. There's some wrongs that  
14 can be made right, so -- that was just something he  
15 said, and it kind of threw my wife and I off.

16 REPRESENTATIVE CLEMMONS: Thank you  
17 very much.

18 CHAIRMAN McCONNELL: Any other  
19 questions?

20 Thank you so much, sir.

21 MR. GADDIE: Thank you, Senator.

22 CHAIRMAN McCONNELL: Your next witness  
23 you need to hear from.

24 MS. SHULER: Michelle Gaddie.

25 CHAIRMAN McCONNELL: Ms. Gaddie, if

1     you'd be kind enough to raise your right hand. Do  
2     you swear to tell the truth, the whole truth, and  
3     nothing but the truth, so help you God?

4                 MRS. GADDIE: I certainly do.

5                 CHAIRMAN McCONNELL: Thank you, ma'am.

6                 MS. SHULER: If you will provide her  
7     with the affidavit, please.

8                 Ms. Gaddie, do you recognize that  
9     document?

10                MRS. GADDIE: I do.

11                MS. SHULER: Is that your affidavit?

12                MRS. GADDIE: It is.

13                MS. SHULER: I would like to offer  
14     Ms. Gaddie's affidavit of complaint into the  
15     record.

16                CHAIRMAN McCONNELL: All right. Is  
17     there objection? Being none, so ordered.

18                (EXH. 4, Witness Affidavit Form of  
19     Michelle A. Gaddie, marked for identification.)

20                MS. SHULER: Ms. Gaddie, you  
21     essentially make the same allegations that your  
22     husband does in his affidavit. You're concerned  
23     about comments made about the military, the  
24     unfairness in the sentencing, and more concerned  
25     about the defendant. Is there anything else that

1 you would like to make the Commission aware of with  
2 regard to the sentencing of Ms. Smith?

3 MRS. GADDIE: Yes, I would. First I  
4 want to take this opportunity to thank all of the  
5 members of the committee present today in allowing  
6 me the privilege of testifying before you. I take  
7 this privilege very seriously. And it's my sincere  
8 hope that my testimony today will help all citizens  
9 of South Carolina.

10 I would like first to describe some of  
11 the background of our case involving my daughter,  
12 if I might take a few moments for those that aren't  
13 aware.

14 On March 19th of 2008 my husband and I  
15 arrived at the home of Talisha Smith to pick up our  
16 children from day care that Ms. Smith ran from her  
17 home. My then seven-month-old infant was presented  
18 to me with a large raised red mark on the right  
19 side of her head. Talisha Smith informed me that  
20 it had occurred early that morning and was due to a  
21 fall from a sitting position on to a rocker.

22 Upon pulling out of the driveway of  
23 Talisha Smith's residence, my child began to utter  
24 a sickening cry. It was a cry not unlike the cry  
25 of a wounded animal. It made my stomach turn. We

1 would later discover in the hospital that the  
2 medical professionals there told us that it was the  
3 cry that was made by patients who suffered a  
4 traumatic head injury.

5 We spent six days in the ICU and  
6 children's hospital. My child required a plasma  
7 transfusion to stop the hemorrhaging in her brain.  
8 When our child was transferred to the children's  
9 ward from the ICU, she was given an eye exam. She  
10 was also found to be suffering from retinal  
11 hemorrhages. These retinal hemorrhages are an  
12 indication of shaken baby syndrome which carries an  
13 almost 50 percent infant mortality rate. My child  
14 was one of the lucky ones. Talisha Smith continued  
15 to lie about the cause of these injuries to us and  
16 investigators until being presented with the  
17 medical evidence three days after her act.

18 In a brief summary, Talisha Smith on  
19 the day of March 19th allowed my baby to suffer in  
20 her care for eight hours after injuring her.  
21 During that time she would have had to have heard  
22 over and over again that same sickening cry that I  
23 heard my child utter in the car in her driveway.  
24 She sought no medical attention for her during that  
25 period. Instead, she attempted to lie and cover up

1 her criminal act by creating a fictitious story  
2 about the events of that day. Had she sought the  
3 immediate medical attention my daughter required,  
4 perhaps her current developmental delays that  
5 currently exist would be nonexistent. My child  
6 will now likely deal with the effects of her crime  
7 for the rest of her life.

8 Talisha Smith pled guilty to the charge  
9 great bodily injury upon a child on the day of  
10 December 8th, 2008, in front of Judge Goode, the  
11 solicitor, Talisha Smith's defense attorney,  
12 members of the press and court, as well as my  
13 husband and I. This is a felony child abuse charge  
14 carrying with it a maximum sentence of 20 years.  
15 This was not a misdemeanor. Talisha Smith at no  
16 time uttered a single apology from her own lips.

17 At the very beginning of this court  
18 procedure George Goode -- Judge Goode appeared to  
19 me to repeat his questions to Talisha Smith several  
20 times. He would also appear to me to lose his  
21 train -- train of thought, at which times he would  
22 bring his hand to his head. I turned to my  
23 victim's advocate at this point and I asked her,  
24 "What is wrong with him? Is he sick?" She replied  
25 that she didn't know.

1                   Once he finished asking his procedural  
2       questions of Ms. Smith, I was then afforded the  
3       opportunity to speak. I spoke at length about the  
4       injuries my daughter received and the care and  
5       treatment she had received thus far. I made it  
6       very clear during my impact statement exactly the  
7       nature of the severity of the injury to my child.

8                   Judge Goode asked prior to me reading  
9       my victim's impact statement that I move closer to  
10      him so that he could make eye contact with me.  
11      During the entire time of my victim's impact  
12      statement, I can only recall twice where Judge  
13      Goode actually looked me in the eye.

14                  After reading my statement, Judge  
15      Kenneth Goode noted that my husband sat beside me  
16      in his military uniform. He made a comment about  
17      the infan -- infantry blue cord my husband wore.  
18      Prior to reading his sentence for Talisha Smith he  
19      stated, "There is nothing I can do to right this  
20      wrong. Just look at the war in Iraq and  
21      Afghanistan." My husband is a decorated combat  
22      veteran. He took immediate offense to the  
23      statement whispering under his breath to me, "What  
24      the hell?"

25                  Judge Goode then repeated several times



1    how there was nothing he could do to right the  
2    wrong that was done to our daughter. I watched him  
3    flip through the pictures that were taken by  
4    Officer Carter both at the hospital and during her  
5    stay in the ICU. He made comment about the loss of  
6    his -- of a child of his own. Talisha Smith in her  
7    defense commented -- commented that she currently  
8    suffered from anxiety. Judge Goode took what  
9    appeared to me to be a great interest into the fact  
10   that she suffered from this disorder, asking her if  
11   she was receiving medication and counseling.

12               Judge Goode then made a statement to  
13   the effect that if he was to sentence Talisha Smith  
14   to jail time, it would only serve to hurt her  
15   children. He then sentenced Talisha Smith to a ten  
16   year suspended sentence to five years probation.

17               That's pretty much my statement. I  
18   would like to make a couple points of  
19   clarification, however. One, Richard Carter, the  
20   arresting officer, was present December 8th in the  
21   courtroom, but at the time the only people that  
22   Judge Goode wanted to hear from were myself and my  
23   husband. He was not asked any questions. He was  
24   not asked to speak by any member of the courtroom  
25   on that day. So he was present there during those

1 proceedings.

2 CHAIRMAN McCONNELL: Any questions from  
3 the Commission?

4 The senator from Lexington.

5 SENATOR KNOTTS: Thank you.

6 You say that the officer was present in  
7 the courtroom, but Judge Goode did not ask for him  
8 to speak?

9 MRS. GADDIE: That's correct, Senator.

10 SENATOR KNOTTS: Okay. Did the  
11 solicitor ask for the officer to be heard?

12 MRS. GADDIE: No. It was our  
13 understanding -- we -- we sat down with the  
14 solicitor prior to even entering the courtroom.  
15 She sat down with us and, you know, what to expect,  
16 the kind of procedural questions he would -- she  
17 would ask. And we asked, you know, at that time,  
18 "Are you going to be bringing any -- you know, is  
19 there any medical testimony? Is Officer Carter  
20 going to speak?"

21 And she felt, you know, unless the  
22 judge asked for it, it wasn't necessary because of  
23 the severity of the crime being great bodily injury  
24 to a child and the fact that she was pleading  
25 guilty to that charge, a felony -- 20 year felony

1 child abuse charge, that it wouldn't be necessary  
2 and that it -- you know, I guess if the judge felt  
3 it was necessary, he would ask.

4 I read a very lengthy victim's impact  
5 statement on everything my child suffered, the sign  
6 language, the fact that she wasn't speaking. I  
7 read that at length prior to the sentencing, and I  
8 recognize I'm not a doctor, but I am her mother.

9 SENATOR KNOTTS: And I understand that,  
10 but you do realize it is the solicitor's case and  
11 that the solicitor must provide to the judge who is  
12 unbiased all the facts so that he can make a  
13 decision? The judge cannot be a part of either  
14 defense or the state because he's the judge, and  
15 it's up to him to have the information, and it's  
16 the solicitor's responsibility to provide whatever  
17 their case is, and it's not up to the judge to call  
18 witnesses. It's up to the solicitor to call  
19 witnesses and the -- the defense attorney.

20 So, you know, you might not understand  
21 the process, but -- and I feel for what's happened,  
22 and I think that more people need to understand the  
23 judicial system whenever they're going into court.  
24 That's why we have implemented the crime victims  
25 assistant in all -- in all courts that we can

1 possibly do.

2 But, you know, there are certain things  
3 that a judge can and cannot do, but one thing is he  
4 cannot call witnesses. If he don't like what a  
5 witness says, he can't, you know, do anything about  
6 that. So you may -- I hope that helps you  
7 understand that. Certainly you should and your  
8 husband and everybody and the officer should have  
9 been in that courtroom. I know if it was my case  
10 when I was coming up -- and I had a lot of them. I  
11 was in court, and I was there. I was interested in  
12 what happened to my case.

13 MRS. GADDIE: He was absolutely  
14 present.

15 SENATOR KNOTTS: And I would have  
16 insisted to inform the judge of what I had found,  
17 especially about the lying part and the -- the  
18 information about the person denying the fact and  
19 everything and all. I mean, as an officer, the  
20 officer would have been the appropriate person to  
21 tell the judge that because it was his case.

22 MRS. GADDIE: Right. And it's my  
23 understanding at the time the solicitor made  
24 that -- those comments about the fact that she had  
25 lied for three days prior and she didn't just, you

1 know, admit to what she had done to my daughter  
2 right away, that it took her, you know, three days  
3 before she actually admitted to what she did to  
4 her.

5 SENATOR KNOTTS: Yes, ma'am. I just  
6 wanted to let -- let you know that the -- the  
7 judge's role in the courtroom is to receive the  
8 evidence from both sides to be able to make a  
9 decision, and he can only make the proper decision  
10 if he has enough evidence and all the evidence  
11 that's needed to make that decision on both sides,  
12 and sometimes in the past that's why we put the  
13 victim's advocate up because we want to make sure  
14 that victims like you are afforded that right to be  
15 able to say anything you want to say in court and  
16 also to let you be kept update with what is going  
17 on with your case from arrest to the courtroom.

18 CHAIRMAN McCONNELL: Professor Freeman.

19 PROFESSOR FREEMAN: Ms. Gaddie, we have  
20 a transcript of the hearing that you spoke at and  
21 others and so forth, and on page 15 of our  
22 transcript, line 23, we have Judge Goode quoted as  
23 saying, "Be happy to hear from the family or police  
24 officers." Do you remember him saying that?

25 MRS. GADDIE: No, I'm sorry, I don't

1 recall that.

2 PROFESSOR FREEMAN: That was just  
3 before you started speaking. You don't recall  
4 that?

5 MRS. GADDIE: That's probably why I  
6 didn't recall that.

7 PROFESSOR FREEMAN: Okay.

8 CHAIRMAN McCONNELL: The senator --  
9 senator from Charleston.

10 SENATOR FORD: Ms. Gaddie, who made the  
11 judge -- who made the judge aware of the fact that  
12 the officer was in court?

13 MRS. GADDIE: The solicitor's office I  
14 believe.

15 SENATOR FORD: You believe, what, he  
16 told the judge that the officer was in court?

17 MRS. GADDIE: He was standing directly  
18 behind the solicitor.

19 SENATOR FORD: No, but did he make the  
20 judge aware of the fact that the officer was in  
21 court?

22 MRS. GADDIE: My recollection is that  
23 the solicitor made the judge aware that Officer  
24 Carter was present in the courtroom on December  
25 8th.

1                   SENATOR FORD:   Okay, but you heard --  
2    did you hear the solicitor say that to the judge?

3                   MRS. GADDIE:   That's my recollection.

4                   SENATOR FORD:   The person who was --  
5    this was a babysitter, right?

6                   MRS. GADDIE:   This was her day care  
7    provider --

8                   SENATOR FORD:   Okay.

9                   MRS. GADDIE:   -- registered by DSS.

10                  SENATOR FORD:   Came highly recommend or  
11   what?

12                  MRS. GADDIE:   She did come highly  
13   recommended.

14                  SENATOR FORD:   How many kids she had,  
15   do you know?

16                  MRS. GADDIE:   In addition to her own  
17   son at the time, she watched one other child.

18                  SENATOR FORD:   How long she was  
19   watching your child before this accident?

20                  MRS. GADDIE:   She started watching my  
21   son -- my son is now three years old -- when he was  
22   approximately two or -- he was a year and a half,  
23   so she probably watched my son for about a year  
24   prior.  My daughter -- we started my daughter when  
25   she turned six weeks of age.  She was born August

1 27th, so she started in October.

2 SENATOR FORD: Did -- did somebody  
3 paint an adequate picture to the judge of what  
4 happened and everything?

5 MRS. GADDIE: I felt I painted a fairly  
6 accurate picture of what happened.

7 SENATOR FORD: You -- did -- what I'm  
8 concerned about is -- okay, if the injury was  
9 severe, why not have the doctors there to let the  
10 judge know?

11 MRS. GADDIE: It was my understanding  
12 that he had the medical file. I didn't  
13 specifically see the medical file being passed. I  
14 did however see him flip through the pictures that  
15 were taken of my child in the ICU. Given the  
16 pictures alone and the fact of the charge great  
17 bodily injury to a child, for myself and -- and I'm  
18 not speaking now just as a mother of the child that  
19 was actually injured. For me, that would be  
20 sufficient. That would be sufficient.

21 You have the pictures of the handprint  
22 on the right side of my child's face in the ICU, as  
23 well as the fact that she pled guilty to the charge  
24 great bodily injury to a child. That to me should  
25 be sufficient. How much more evidence do you need?



1 Then you have the -- me as the mother explaining to  
2 you that my child doesn't speak. She drools. She  
3 screams. I don't know how much more evidence Judge  
4 Goode needed to make a determination on what a just  
5 sentence should have been.

6 SENATOR FORD: And, Ms. Gaddie, I feel  
7 for you and I understand. All the time I was  
8 arrested and tried, you know, we didn't take no  
9 chances. If I had expert witnesses, we brought  
10 them. I mean, we can't take a chance I'm  
11 assuming -- I mean, judges assuming anything. And  
12 what I'm saying is if this was so severe and  
13 important to you and your husband, why didn't y'all  
14 in -- I mean, insisted that some expert witness  
15 come? I mean, the solicitor could have easily done  
16 that.

17 Were you satisfied with the performance  
18 of the solicitor?

19 MRS. GADDIE: I was satisfied with the  
20 performance of the solicitor, yes, again, because  
21 the nature of the charge. It's not a misdemeanor  
22 charge. It's a 20 year felony child abuse charge.  
23 The fact that she pled guilty, he had the pictures  
24 to look at, as well as my statement on what my  
25 child suffered through that day, the following

1 days, the coming months, up to today should be  
2 sufficient.

3 I don't see how bringing a police  
4 officer -- officer coming out there or a doctor  
5 would have made -- should have made any bit of  
6 difference. This was a six-month-old infant,  
7 infant six months old. Just the age of the child  
8 alone, the age of the child alone should have been  
9 enough. I don't see how that should have made any  
10 bit of difference in the sentencing.

11 Okay. They didn't bring up a doctor.  
12 They didn't bring up the police officer, although  
13 he was there. I'm sure that the solicitor felt  
14 that the evidence that she presented was  
15 sufficient, and I agree with her.

16 CHAIRMAN McCONNELL: The senator from  
17 Lexington.

18 SENATOR KNOTTS: Thank you,  
19 Mr. Chairman.

20 What else was she charged with?

21 MRS. GADDIE: In the beginning she was  
22 actually charged with two charges. There was this  
23 great bodily injury to a child, and then because it  
24 happened -- I'm not quite sure of the radius --  
25 within a day care center, there was an additional

1     ten years charge as well. In talking with the  
2     solicitor's office, in exchange for her guilty plea  
3     on December 8th, the solicitor's office, along with  
4     my husband and I's agreement, agreed to drop the  
5     additional ten year charge.

6                 SENATOR KNOTTS: There was a plea  
7     negotiation by the solicitor's office I believe in  
8     here on page three of the transcript to nolle  
9     pros -- I believe it states that she's charged with  
10    enhancement of the commission of an offense within  
11    a hundred yards of a day care and "We will be nolle  
12    prosing that count."

13                MRS. GADDIE: But that's the charge  
14    that I believe --

15                SENATOR KNOTTS: And y'all -- y'all  
16    agreed to that?

17                MRS. GADDIE: We did. Yes. We  
18    actually -- we would --

19                SENATOR KNOTTS: Why would you --

20                MRS. GADDIE: Because what was  
21    explained to us by the solicitor's office at the  
22    time, that this would ensure that we have a guilty  
23    plea, that we wouldn't have to go to trial, and at  
24    the time it was a very emotional time for my  
25    husband and I because my daughter was, you know,

1 really suffering at this point and she felt that,  
2 you know, she would be able to get the guilty plea,  
3 she would get sentenced, and we'd move past this  
4 and put it behind us, rather than drag us through a  
5 length -- lengthy court procedure and trial.

6                   So that was our understanding, and we  
7 agreed because up to that point we really had been  
8 through quite a bit. And we were in agreement  
9 that, "Okay, she's going to plead guilty. You  
10 know, we drop the extra ten years." I mean, even  
11 if we had had the extra ten years, it doesn't  
12 appear that it would have made any difference. She  
13 got probation.

14                   SENATOR KNOTTS: You don't think that  
15 the judge would have been looking at it in a light  
16 the solicitor is not -- the person is charged with  
17 two offenses and that the solicitor's office was  
18 not willing to -- to nolle pros either, they want  
19 to go forward with all of them, and that would not  
20 have given the judge some type of indication  
21 that -- that was real seriousness of wanting to put  
22 this person in jail?

23                   MRS. GADDIE: No, I don't. I honestly  
24 don't. I honestly believe on December 8th Judge  
25 Goode seemed to be more concerned with Talisha

1 Smith's state of mind and her family than she (sic)  
2 did about my child and my family. I don't think it  
3 would have made any bit of difference.

4 SENATOR KNOTTS: Well, was the  
5 solicitor more concerned about getting a guilty  
6 plea than --

7 MRS. GADDIE: The --

8 SENATOR KNOTTS: -- be concerned for  
9 your child?

10 MRS. GADDIE: No. I mean, honestly I  
11 thought the solicitor was looking out in our best  
12 interest. I mean, we had been talking with the  
13 solicitor's office, like my husband said, in  
14 constant contact. So she was very aware of the  
15 struggles we were having with my daughter, with the  
16 speech therapy, with the screaming episodes, and  
17 she knew that we were -- we were very emotional,  
18 very tired, and that she wanted to find a quick  
19 resolution for us so that we would be able to move  
20 on from this incident because up until December  
21 8th, that was all it was about in our house was,  
22 you know, this charge and this case, what had been  
23 done to Kendra, and we were really looking forward  
24 to December 8th being able to put it behind us.  
25 That didn't happen. That didn't happen. In fact,

1 we still get to deal with it because of the lenient  
2 sentence that was given by Judge Goode.

3 I don't know how any person who could  
4 stand there and listen to my victim's impact  
5 statement, seen the charge, understood exactly what  
6 the charge meant would give a sentence of  
7 probation. I don't have -- I can't even comprehend  
8 it. I've tried to go over it in my mind a million  
9 times trying to think of why would anybody do that.  
10 Just with the evidence that was submitted at court  
11 that day should have been sufficient for a  
12 justice -- for justice for my daughter, and justice  
13 wasn't given. Probation is not a just sentence.

14 SENATOR KNOTTS: And I appreciate your  
15 position on that, and you understand that our  
16 position here is to ensure that enough evidence and  
17 enough information was given to the judge that was  
18 presented in court to be able to make the same  
19 decision. But I'm looking here at what -- did the  
20 solicitor give you any indication that they had a  
21 problem with -- with convicting that person with it  
22 happening within a day care?

23 MRS. GADDIE: She -- no, she did not.  
24 She told us very -- time and time again we were  
25 told, "It's a very strong case, very strong case,

1 not to worry," but she was concerned about our  
2 mental state and our family being able to move on  
3 from this incident which is why she suggested that  
4 we drop the additional charge in exchange for the  
5 guilty plea so that we could get a just sentence  
6 for our daughter and move on from it. That was the  
7 general understanding between my husband and myself  
8 and the solicitor's office and we agreed.

9 SENATOR KNOTTS: Was there any  
10 indication that they had worked out a plea  
11 negotiation to drop that charge for a plea  
12 negotiation to the one charge? Is that what they  
13 told you or was it for the guilty plea or was it  
14 for your mental state because you was --

15 MRS. GADDIE: It was --

16 SENATOR KNOTTS: -- going to have to go  
17 through the guilty plea regardless whether it  
18 was --

19 MRS. GADDIE: Right.

20 SENATOR KNOTTS: -- one charge or two  
21 charges?

22 MRS. GADDIE: In exchange for her  
23 guilty plea, we would drop the additional charge.  
24 If we perhaps didn't offer to drop the additional  
25 charge, then we -- that we ran the possibility of

1 possibly going to trial, and she wanted to avoid  
2 that for our benefit. Not that we wouldn't have  
3 gone through it, because we would have gone through  
4 it, but I think she was looking as a way to find  
5 some closure for us because we had already been  
6 through so much.

7               SENATOR KNOTTS: Did she indicate that  
8 she was going to recommend jail time to the judge  
9 at -- at the time of plea? And I believe your  
10 husband stated earlier that y'all never wanted a  
11 plea negotiation. Y'all wanted a -- a trial.

12              MRS. GADDIE: Well, what had happened  
13 was exactly we had discussed, you know, what was  
14 going to go on within the courtroom, and we  
15 expressed -- and I actually showed the solicitor a  
16 copy of my im -- victim's impact statement where  
17 very clearly in that statement I was looking for  
18 the maximum sentence allowed by law to send a clear  
19 message that these types of crimes weren't going to  
20 be tolerated in our society by our day care  
21 providers.

22              She understood that we were looking for  
23 significant jail time. She told us that it was  
24 going to be a straight-up plea and that with the  
25 evidence provided and the seriousness of the charge



1 and the age of my child at the time of this crime  
2 that that should be sufficient, that she -- you  
3 know, she couldn't say -- she couldn't make any  
4 promises.

5 And I remember explicitly saying,  
6 "Well, if she gets probation, this is going to be a  
7 problem." I knew I would not be happy with  
8 probation.

9 SENATOR KNOTTS: Did she indicate that  
10 to the judge --

11 MRS. GADDIE: Yes, she did.

12 SENATOR KNOTTS: -- the solicitor?

13 MRS. GADDIE: Yes, she did.

14 SENATOR KNOTTS: That you were not  
15 going to be happy with probation?

16 MRS. GADDIE: She didn't say those  
17 express words, but she said that she would -- I  
18 believe --

19 SENATOR KNOTTS: Because I don't see it  
20 in here.

21 MRS. GADDIE: Yeah, my recollection is  
22 that, you know, she talked about the severity of  
23 the injury, the age of my child.

24 SENATOR KNOTTS: But did she tell the  
25 judge that -- that y'all specifically was not going

1 to be happy with the probationary sentence, that  
2 they were insisting on jail time as a -- as a  
3 solicitor -- as a prosecutor?

4 MRS. GADDIE: Those words were not used  
5 to my recollection.

6 SENATOR KNOTTS: Thank you.

7 CHAIRMAN McCONNELL: Let me ask you a  
8 couple of questions very quickly. I'm reading from  
9 the transcript, and tell me if it's accurate. You  
10 made the following statement -- I hate to go over  
11 this with you, but I want to make sure that these  
12 statements are accurate.

13 Where you said, "It was like --" said,  
14 "I listened to our daughter make a sound. It was  
15 like a cry --"

16 SENATOR KNOTTS: What page are you on?

17 CHAIRMAN McCONNELL: I am on page 19.

18 "It was like a cry you would hear from  
19 a wounded animal. Immediately I felt panic, as  
20 this was not a sound I had heard her utter before.  
21 That sound haunts me to this day."

22 Was that your statement?

23 MRS. GADDIE: That's correct.

24 CHAIRMAN McCONNELL: Did anybody  
25 challenge that in court?

1 MRS. GADDIE: No.

2 CHAIRMAN McCONNELL: Did you make the  
3 following statement in court? "It was  
4 heartbreaking --" and I'm on page 20.

5 "It was heartbreaking to watch her  
6 suffer so much. She could not hold down formula,  
7 and she vomited frequently, requiring the formula  
8 to be diluted and given in sparing amounts over  
9 time. She had countless IVs started because her  
10 tiny veins were still too fragile and new to hold a  
11 line open for an extended period of time.  
12 Countless needle sticks and tests were run. A  
13 plasma transfusion was necessary to stop the  
14 bleeding in her brain."

15 Did you make those statements?

16 MRS. GADDIE: I did.

17 CHAIRMAN McCONNELL: Did anyone  
18 challenge the accuracy of that statement?

19 MRS. GADDIE: They did not.

20 CHAIRMAN McCONNELL: Did you make the  
21 following statement in court? Quote, She could not  
22 hold down full strength formula for one week after  
23 discharge, and it was another two weeks before she  
24 could hold down solid food without vomiting, end of  
25 quote. I hate to ask you, but that is accurate, is

1 it not?

2 MRS. GADDIE: That is accurate.

3 CHAIRMAN McCONNELL: And were you  
4 challenged on that?

5 MRS. GADDIE: I was not.

6 CHAIRMAN McCONNELL: Was anything put  
7 in the record that disputed that?

8 MRS. GADDIE: No.

9 CHAIRMAN McCONNELL: Let me ask you the  
10 following thing. Did you make the statement, "I  
11 saw an immediate change in her --" I'm on page 21.

12 "I saw an immediate change in her  
13 personality. It's like I have a different child.  
14 Kendra used to be constantly smiling and babbling.  
15 In the months -- in the months that have followed,  
16 she no longer smiles and no longer babbles.  
17 Instead, she has episodes of screaming where she is  
18 inconsolable, and to this day she wakes up in the  
19 middle of the night screaming at the top of her  
20 lungs."

21 Do you recall making those statements?  
22 I hate to ask you this.

23 MRS. GADDIE: I do.

24 CHAIRMAN McCONNELL: Did anybody  
25 challenge that or ask for additional evidence on

1 the accuracy of that that day?

2 MRS. GADDIE: No.

3 CHAIRMAN McCONNELL: Let me read you  
4 one other -- two other things. I'm down on the  
5 page of page 21. And, quote, Kendra requires  
6 therapists and specialists to work with her, and we  
7 have yet to hear the words mommy or daddy. She is  
8 being taught sign language to help her communicate,  
9 and she can sign the words more and food, end of  
10 quote.

11 Do you recall making those statements?

12 MRS. GADDIE: I do.

13 CHAIRMAN McCONNELL: Did anybody  
14 challenge the need for therapists or specialists or  
15 that she had to go to sign language?

16 MRS. GADDIE: No, they did not.

17 CHAIRMAN McCONNELL: And I want to  
18 quote another one. Quote, And I can see the look  
19 of frustration on her face when she attempts to  
20 speak, but all she can muster is a scream, end of  
21 quote.

22 I hate to ask you again, but is that  
23 accurate.

24 MRS. GADDIE: That's accurate.

25 CHAIRMAN McCONNELL: And did anybody in

1     that courtroom challenge that that was not the  
2     condition of that child?

3                 MRS. GADDIE:  No, they did not.

4                 CHAIRMAN McCONNELL:  Lastly I believe  
5     in the transcript, did you not turn to the  
6     defendant and have something to say to her?

7                 MRS. GADDIE:  I did.

8                 CHAIRMAN McCONNELL:  And wasn't there  
9     some testimony about the child getting slapped  
10    because she was screaming?

11                MRS. GADDIE:  Yes, there was.

12                CHAIRMAN McCONNELL:  Did anybody  
13    challenge that?

14                MRS. GADDIE:  Nobody challenged it, no.

15                CHAIRMAN McCONNELL:  And so you gave  
16    all of these statements, your observation having to  
17    stand there and tell -- you're not a lawyer; is  
18    that correct?

19                MRS. GADDIE:  That's correct.

20                CHAIRMAN McCONNELL:  And you don't have  
21    legal training?

22                MRS. GADDIE:  I do not.

23                CHAIRMAN McCONNELL:  And you were there  
24    as the mother of that child, and you stated to the  
25    best of your recollection what you had observed

1 with your child?

2 MRS. GADDIE: Yes.

3 CHAIRMAN McCONNELL: And your child  
4 needed therapists, needed people, and appeared to  
5 have all this damage, and did anyone in the  
6 courtroom challenge those statements?

7 MRS. GADDIE: They did not.

8 CHAIRMAN McCONNELL: Thank you.

9 SENATOR FORD: Sir, can I get a  
10 question?

11 CHAIRMAN McCONNELL: Yes.

12 SENATOR FORD: Of course you was  
13 eloquent, but I'm confused. Now, you got a plea  
14 coming in court. The judge agreed with the plea,  
15 the solicitor and the lawyer, and a mother got up  
16 and testified on her behavior of the child. What  
17 would that have to do with the judge? Can you tell  
18 me, because I'm confused on that part.

19 CHAIRMAN McCONNELL: Senator, I'm just  
20 trying to get the record out there. The lady has  
21 been questioned. There's been a lot made about the  
22 fact there was not a medical expert, and I wanted  
23 to make sure that she had made these statements  
24 that indicate that this child needed specialists,  
25 that these damages to this child had occurred over

1 months. And it -- she made that case and no one  
2 challenged it.

3 SENATOR FORD: And, Senator, you're a  
4 hundred percent right. The mother -- the mother is  
5 a caring mother, and I -- and I respect that and I  
6 love that. But the judge -- what should be his  
7 response in that situation when there's -- I -- the  
8 only thing I was trying to find out, if you got a  
9 solicitor and a lawyer agreeing on a -- on a -- on  
10 a plea bargain -- and the way it's usually done is  
11 that they present it to the judge. That's all the  
12 judge have to work with.

13 Now, it seem to me the solicitor job  
14 then would be to convince the judge how serious  
15 this injury was. The mother did a wonderful job  
16 explaining it, and I could -- I could understand  
17 that part. But the part I can't understand is why  
18 wouldn't a solicitor bring a medical profession --  
19 because that's the -- that's the -- that's what  
20 people do now. They bring expert witness in court  
21 to let everybody know how serious whatever charge  
22 it is, you know, is.

23 And the solicitor -- solicitor,  
24 Senator, dropped the ball, and, you know -- I mean,  
25 I hate to say it, but the solicitor simply dropped



1 the ball and all the judge had to work with is what  
2 was presented by the prosecutor and the -- I mean,  
3 by the prosecutor and the lawyer.

4 CHAIRMAN McCONNELL: Senator, the point  
5 I make is I want to make sure that the record is  
6 clear and that she is -- there's nothing I know of  
7 in the law that prohibits her from being able to  
8 testify to what she testified to, and I want to  
9 make sure that was on the record and it was not  
10 challenged.

11 SENATOR FORD: And she did a good job.

12 CHAIRMAN McCONNELL: And you can draw  
13 your conclusions and I will draw my conclusions and  
14 every member of the General Assembly will draw  
15 their conclusions, and that's why -- I'm not  
16 avoiding your question, but I don't think I should  
17 respond to it. I just wanted to make sure that I  
18 understood what she testified to and it was not  
19 challenged.

20 SENATOR FORD: And I want to let her  
21 know too now, I agree with her -- I agree with what  
22 you done a hundred percent, and I agree with her  
23 testimony there was real -- it was a bad trauma  
24 situation for the parents to go through, but I'm  
25 just sorry the solicitor dropped the ball. That's

1 the only part I'm concerned with.

2 CHAIRMAN McCONNELL: Does anybody have  
3 any other questions?

4 Mr. Sellers.

5 MR. SELLERS: Ms. Gaddie, you were  
6 informed, I take it, that the solicitor had made a  
7 motion for a resentencing in this case.

8 MRS. GADDIE: Yes, I am.

9 MR. SELLERS: Okay. Are you planning  
10 to be at the resentencing hearing?

11 MRS. GADDIE: I am. If I also might  
12 too make a clarification on that point.

13 The solicitor's office filed that  
14 motion on December 10th, two days after the  
15 sentencing. I had made and my husband weekly phone  
16 calls to the solicitor's office asking what the  
17 status of that motion was from Judge Goode, and we  
18 spoke both to Jan Knobles who is our victim's  
19 advocate and to Margaret Fent, and she -- they  
20 replied each time that there was no response from  
21 Judge Goode's office. We didn't get a response  
22 until this past Thursday, 3:55 p.m.

23 MR. SELLERS: So you didn't know that  
24 the hearing had been rescheduled until this past  
25 week?

1 MRS. GADDIE: I did not hear that he  
2 had decided to hear our motion to reconsider the  
3 sentence until this past Thursday at 3:55 p.m.  
4 Actually it was -- I know the time because I was in  
5 the Boston airport about to board a flight back to  
6 Columbia, South Carolina.

7 CHAIRMAN McCONNELL: Any other  
8 questions?

9 Thank you.

10 SENATOR KNOTTS: Mr. Chairman.

11 CHAIRMAN McCONNELL: Yes, sir, the  
12 senator from Lexington.

13 SENATOR KNOTTS: You heard Judge Goode  
14 say that he signed the order to reconsider two or  
15 three days after the December 8th hearing?

16 MRS. GADDIE: I did hear that.

17 SENATOR KNOTTS: And that order would  
18 have been presented by the state requesting the  
19 rehearing?

20 MRS. GADDIE: I -- I don't know the  
21 whole legal procedures. I know that I had -- we  
22 had talked to the solicitor's office many times  
23 asking what the status -- if they had heard whether  
24 Judge Goode was going to hear our motion. I know  
25 that Margaret Fent made inquiries to Judge Goode's

1 law clerk about what the status was, and each time  
2 there was no response until this past Thursday at  
3 3:55 p.m.

4 SENATOR KNOTTS: And you were notified  
5 by who?

6 MRS. GADDIE: I was notified by the  
7 victim's advocate Jan Knobles.

8 SENATOR KNOTTS: Jan Knobles.

9 Mr. Chairman, do we have a copy of that  
10 order that was signed by Judge Goode with a date?

11 CHAIRMAN McCONNELL: Staff counsel  
12 informs me we do not, Senator.

13 SENATOR KNOTTS: Do not. Can we get a  
14 copy? Because it goes back -- the reason I'm  
15 asking for a copy, it goes back to somebody dropped  
16 the ball. If he signed it two days or three days  
17 after he heard the case and was going to have a  
18 hearing, then she should have been notified -- and  
19 it goes back to the solicitor's office to notify  
20 her of -- of the agreement to rehear it. Now, the  
21 scheduled time that it would be heard would be set  
22 up by the Court. And of course that's when Judge  
23 Goode would be able to get back into the county.

24 PROFESSOR FREEMAN: Mr. Chairman, can I  
25 ask that the staff get the clerk of court to fax us

1 a copy of the order?

2 CHAIRMAN McCONNELL: Is there any  
3 objection? Being none, thank you, Professor.

4 Ask one other question, and I -- I  
5 regret having to do this, but I want to make sure I  
6 understand all the evidence that was in court that  
7 day. Page 23 of the transcript indicates to me  
8 that there were five photographs that were offered  
9 up and they were shown to defense counsel. I hate  
10 to ask the subject. Could you tell me what those  
11 five photographs show. Describe to me what they  
12 show.

13 MRS. GADDIE: I didn't -- I'm not sure  
14 if I've seen all five. I know I've seen at least  
15 two, and on both of those pictures there was a  
16 definite handprint on the right side of my child's  
17 face.

18 CHAIRMAN McCONNELL: Was the face in  
19 any way swollen or --

20 MRS. GADDIE: At the time when they  
21 took the pictures, the pictures appear to be  
22 bruised. I -- I'm not going to say swollen.

23 CHAIRMAN McCONNELL: Thank you.

24 Are there any further questions?

25 Thank you, ma'am.

1 MRS. GADDIE: Thank you.

2 CHAIRMAN McCONNELL: Ms. Shuler, who is  
3 your next --

4 MS. SHULER: I'd like to call Margaret  
5 Fent.

6 CHAIRMAN McCONNELL: Ms. Fent, are you  
7 in the audience? Good afternoon.

8 MS. FENT: Good afternoon.

9 CHAIRMAN McCONNELL: If you'd be so  
10 kind as to raise your right hand. Do you swear to  
11 tell the truth, the whole truth, and nothing but  
12 the truth, so help you God?

13 MS. FENT: I do.

14 CHAIRMAN McCONNELL: Thank you, ma'am.

15 MS. SHULER: Ms. Fent, you were the  
16 solicitor -- assistant solicitor who handled the  
17 guilty plea in the Talisha Smith case; is that  
18 correct?

19 MS. FENT: That is correct.

20 MS. SHULER: How did you come to  
21 schedule the guilty plea before Judge Goode?

22 MS. FENT: Actually it was already  
23 scheduled. As it had been said, another assistant  
24 solicitor was handling the case. She was sent out  
25 on emergency maternity leave. She works directly

1 with me. And she left me all of her cases that  
2 were scheduled and what days they were scheduled  
3 for. So that one was already -- already scheduled.

4 MS. SHULER: At the guilty plea hearing  
5 and the sentencing, what evidence did you offer in  
6 terms of the seriousness of the victim's injury?

7 MS. FENT: I, as is in transcript,  
8 summarized, as is the regular practice in pleas,  
9 is -- the injuries that were in the medical records  
10 provided by the hospital.

11 MS. SHULER: Did you offer any medical  
12 records as part of the sentencing hearing?

13 MS. FENT: As is the regular, normal  
14 practice in a guilty plea, it was all done by  
15 proffer of testimony -- or proffer of facts by me.

16 MS. SHULER: When did you receive the  
17 order of rehearing from Judge Goode?

18 MS. FENT: I have not received any  
19 order regarding a granting of the hearing.

20 MS. SHULER: How did you learn that  
21 this matter had been rescheduled for rehearing?

22 MS. FENT: The first I heard was just  
23 prior to when we called Michelle Gaddie. It was on  
24 Thursday afternoon, and I was contacted by Judge  
25 Goode's law clerk saying that he wanted to schedule

1 it as quickly as possible.

2 MS. SHULER: When did you file a motion  
3 for rehearing?

4 MS. FENT: Two days after the plea.

5 CHAIRMAN McCONNELL: We're going to  
6 have to take a technical break during your  
7 testimony, but we're going to try to go another ten  
8 minutes or so before we have to do what staff  
9 indicates to me that we'll have to do. So you  
10 want -- have you finished yet?

11 MS. SHULER: That's it.

12 CHAIRMAN McCONNELL: All right. We'll  
13 turn to the Commission and see if there are any  
14 questions.

15 The senator from Charleston.

16 SENATOR FORD: Yeah. Attorney, when  
17 did -- were you aware of the fact that the Gaddies  
18 did not want to have -- where you listen to --  
19 what, cop a plea or something?

20 MS. FENT: I -- other than what is  
21 public record and what is part of this transcript  
22 because it is still a pending case, I do not feel  
23 comfortable talking about any other facts or any  
24 other things that happened other than, like I said,  
25 what is public record and what is part of this



1 transcript.

2 SENATOR FORD: But she made it public  
3 that -- the family made it public that they weren't  
4 interested in no plea bargaining.

5 MS. FENT: Well, she does not have the  
6 same ethical obligations that I do. My ethical  
7 professional rules of conduct prohibit a lawyer as  
8 speaking -- making extra judicial comments about a  
9 pending case. Those obligations do not also  
10 apply -- not apply to the victim's family. So  
11 other than what's public record and what's in the  
12 transcript, I just can't comment on.

13 SENATOR FORD: Ms. Attorney, when a  
14 whole -- whole -- everybody here know now that she  
15 said she didn't want -- the family didn't want to  
16 do a plea, and then y'all wind up doing a plea.

17 MS. FENT: I -- I cannot comment about  
18 other things that were happening in the case until  
19 the case is no longer pending.

20 CHAIRMAN McCONNELL: Go to the  
21 professor for a minute. I think it will clarify.

22 Professor Freeman.

23 PROFESSOR FREEMAN: I just have a quick  
24 question about permanency of the injuries. Has any  
25 medical professional expressed an opinion in this

1 matter concerning the permanencies of the poor  
2 child's injury?

3 MS. FENT: Well, as I -- what I can say  
4 is what was indicated in the transcript is that at  
5 one point Judge Goode asked me about any behavioral  
6 effects this would have on the child, and I did  
7 indicate that the experts said that that is still  
8 to be seen. That is not something that they can  
9 really judge on what's going to happen in the  
10 future, that they will have to wait and see, you  
11 know, how the child develops.

12 SENATOR FORD: One more question.

13 CHAIRMAN McCONNELL: Are you finished?

14 PROFESSOR FREEMAN: No, just a quick  
15 follow-up. We -- we know that the injuries are  
16 serious and all. I'm just trying to understand if  
17 there is any medical finding to this point that  
18 this child is going to be permanently adversely  
19 effected by the -- this incident.

20 MS. FENT: That would be -- I guess  
21 other than it wasn't -- that wasn't relayed in the  
22 transcript. You know, the problems that she's  
23 having up to this point and that -- the fact that  
24 the experts can't say about behavior was -- was  
25 relayed to the Court.

1 PROFESSOR FREEMAN: Thank you.

2 CHAIRMAN McCONNELL: The senator from  
3 Charleston.

4 SENATOR FORD: When the trial started,  
5 why didn't you call an expert witness?

6 MS. FENT: It wasn't a trial. It was a  
7 guilty plea, and it was --

8 SENATOR FORD: So you couldn't -- at  
9 that point you can't call an expert witness?

10 MS. FENT: As is -- the typical  
11 practice in guilty pleas is the evidence is  
12 presented by way of a proffer of the solicitor's  
13 office, and then at one point -- if you see on page  
14 15, line 12, the Court asks of the defendant, "Do  
15 you believe that the facts stated by the solicitor  
16 are materially accurate and correct?" And the  
17 defendant answered, "Yes, sir. Yes, sir."

18 So if there had been any at that point  
19 disagreement with the facts that I presented to the  
20 Court, we would most likely step down. The plea of  
21 guilty, the admission that she committed this act  
22 would stop, and we would either go to a trial or --  
23 and we would have those witnesses ready, or I guess  
24 renegotiate or he would talk to his client about  
25 whether or not he wanted to admit -- she wanted to

1 admit this.

2 SENATOR FORD: How much time did you  
3 spend on this case?

4 MS. FENT: I, in working with Anna  
5 Goode, had been -- Good -- had been aware of this  
6 case --

7 SENATOR FORD: Not aware. How much  
8 time did you spend on the case? Are you a Richland  
9 County solicitor?

10 MS. FENT: Yes.

11 SENATOR FORD: What's y'all caseload  
12 per solicitor?

13 MS. FENT: I have probably around 200  
14 charges -- not defendants, but charges on my  
15 docket.

16 SENATOR FORD: 200 charges, and how  
17 cases? Would that be cases or would you have more  
18 cases than that?

19 MS. FENT: Well, those would be -- they  
20 could be, I don't know, 80 defendants, a hundred  
21 defendants. I don't know how many defendants, but  
22 they're 80 -- approximately 200 charges.

23 SENATOR FORD: So you have sufficient  
24 time on this case you feel?

25 MS. FENT: Absolutely.

1 SENATOR FORD: But --

2 MS. FENT: It was a guilty plea. It  
3 was an admission. It was a guilty plea.

4 SENATOR FORD: Okay. When Ms. Good had  
5 the case, was it a guilty plea?

6 MS. FENT: Speaking generally of -- of  
7 cases, every case starts out -- so not talking  
8 about this one specifically, but every single case  
9 starts out with the prospect that the case is going  
10 to trial. So every case is worked up as if we are  
11 going to have to try this case.

12 SENATOR FORD: Okay. So when the case  
13 was sent over to you, was it a guilty plea?

14 MS. FENT: Yes.

15 SENATOR FORD: I mean -- I'm able to  
16 say -- you've got me confused because the family  
17 was -- I mean, they have made it clear to us today  
18 that they wasn't interested in no guilty plea.

19 MS. FENT: Again, that's getting into  
20 the facts of the pending case that I just can't --  
21 I can't comment on.

22 CHAIRMAN McCONNELL: Mr. Harrell.

23 MR. HARRELL: At the resentencing  
24 hearing are you planning to do something different?  
25 Are you going to change something that you did

1 to -- to have the judge come out with a different  
2 outcome?

3 MS. FENT: I don't think it's  
4 appropriate for me to speak of -- of that since it  
5 is a pending case.

6 MR. HARRELL: Right. Right. But  
7 you're not satisfied with the outcome as it was, so  
8 you want a resentencing hearing.

9 MS. FENT: We filed a motion for  
10 reconsideration.

11 MR. HARRELL: So at this -- at this  
12 next hearing are you going to present something  
13 more than -- than is already in the transcript?

14 MS. FENT: As I said, I can't -- I  
15 can't speak to that. My ethical rules prohibit me  
16 from commenting on a pending case other than what  
17 is public record or what is in this transcript.

18 MR. HARRELL: Okay. All right. Thank  
19 you.

20 CHAIRMAN McCONNELL: The senator from  
21 Lexington and then --

22 SENATOR KNOTTS: Thank you, Ms. Fent.  
23 I read your transcript. Is it your responsibility  
24 to inform the judge of the defendant's prior  
25 convictions or is it the defense attorney's to

1 describe the -- his client's previous convictions  
2 and with you --

3 MS. FENT: Generally it's the  
4 prosecutor's responsibility to tell the judge, but  
5 if I was to misspeak, the defense attorney would  
6 have an ethical obligation to correct that  
7 misstatement.

8 SENATOR KNOTTS: Okay.

9 CHAIRMAN McCONNELL: All right.

10 SENATOR KNOTTS: Did you ask for the  
11 police officer to -- to testify?

12 MS. FENT: Since it's actually not in  
13 the transcript, I would not want to -- to respond  
14 to that question.

15 SENATOR KNOTTS: Is this an accurate  
16 transcript of the trial -- of the guilt -- of the  
17 guilty plea in this case?

18 MS. FENT: It is.

19 SENATOR KNOTTS: Well, if I told you  
20 that you did not ask for the police officer to  
21 testify, would you say --

22 MS. FENT: That --

23 SENATOR KNOTTS: -- it is -- being in  
24 this transcript that it is correct?

25 MS. FENT: I would tell you that I did

1 indicate that Investigator Richard --

2 SENATOR KNOTTS: He was there.

3 MS. FENT: -- Richard Carter was  
4 standing next to me, and it is my general practice  
5 that -- after I present my factual basis for the  
6 plea, it is my general practice to turn to that  
7 investigator and ask them do they want to add  
8 anything to what I've already stated.

9 SENATOR KNOTTS: And --

10 MS. FENT: And if that investigator  
11 says they do want to speak, I would tell the Court  
12 that the investigator also wanted to address the  
13 Court.

14 SENATOR KNOTTS: And --

15 MS. FENT: My general practice is to  
16 make sure when they're standing next to me that I  
17 give them an opportunity just as I do with victims.

18 SENATOR KNOTTS: And you do realize  
19 it's your responsibility to present the state's  
20 case to the judge and the defense attorney's  
21 responsibility to state his client's position and  
22 that the judge does not have the authority to call  
23 in people that you don't present? Is that not  
24 right? The judge is not involved in presenting the  
25 case?



1 MS. FENT: I have had occasions where a  
2 judge may have asked some questions and perhaps  
3 would say, "Let's continue the case to -- you know,  
4 I would like more information on this or would like  
5 to --"

6 SENATOR KNOTTS: But it's your duty to  
7 present your case, right?

8 MS. FENT: Absolutely.

9 SENATOR KNOTTS: It's not the judge's  
10 duty to present your case?

11 MS. FENT: Absolutely.

12 SENATOR KNOTTS: And what you present  
13 to the judge, the judge has to take in  
14 consideration in making his decision in a fair --  
15 fair manner?

16 MS. FENT: Yes.

17 SENATOR KNOTTS: All right. How long  
18 did you actually have the case and how -- that was  
19 handed to you because of a maternity leave on  
20 another solicitor?

21 MS. FENT: Well, I don't feel  
22 comfortable answering questions that don't have to  
23 do with -- with public record or what's actually in  
24 the transcript.

25 SENATOR KNOTTS: Well, let --

1                   CHAIRMAN McCONNELL: Senator, I hate to  
2 interrupt, but we've got a technical problem.  
3 We've got to take a break.

4                   SENATOR KNOTTS: Okay.

5                   CHAIRMAN McCONNELL: I have to stop --

6                   SENATOR KNOTTS: I'd like to ask --

7                   CHAIRMAN McCONNELL: Yes, sir. We'll  
8 come right back. But at this without objection  
9 we're going to recede for the moment.

10                  MS. SHULER: Five minutes.

11                  CHAIRMAN McCONNELL: We need about five  
12 minutes to make adjustments.

13                  (A recess transpired.)

14                  CHAIRMAN McCONNELL: We're going to go  
15 back on -- we're going to go back on the record at  
16 this point to resume, and, Senator -- Ms. Fent,  
17 hold on one second.

18                  We're back on record. Ms. Fent, I  
19 believe the senator -- I'll get the senator to  
20 repeat the question, or do you recall it?

21                  Senator, would you repeat question. I  
22 think I interrupted you.

23                  We're back with Senator Knotts on the  
24 record.

25                  SENATOR KNOTTS: Thank you.

1 I'd like to know the two charges that  
2 were in -- that she originally was charged with.

3 MS. FENT: Infliction of great bodily  
4 injury upon a child, and then the second one was  
5 infliction of great bodily injury upon a child with  
6 a proximity charge. The proximity basically --

7 CHAIRMAN McCONNELL: Your mic is not  
8 working apparently. Wonderful electronics in this  
9 building. That's not for the record.

10 Go ahead.

11 MS. FENT: It's an enhancement so you  
12 can add additional time on, that the offense  
13 occurred within so many yards of a school or a day  
14 care. So it was the same exact charge, but with  
15 this enhancement.

16 SENATOR KNOTTS: Okay. And you had the  
17 police officer there to testify if the police  
18 officer -- if -- if you wanted him to, right?

19 MS. FENT: If -- or if he wanted to.  
20 If there was anything additional that, you know, I  
21 left out or that he felt needed to be, you know,  
22 added to my factual recitation, he could -- he  
23 could either inform me to say it or he himself  
24 could speak.

25 SENATOR KNOTTS: And you had met with

1 the mother and the father of the child --

2 MS. FENT: Yes.

3 SENATOR KNOTTS: -- prior to that?

4 MS. FENT: Yes.

5 SENATOR KNOTTS: And you were aware of  
6 basically what the mother was going to present to  
7 the Court?

8 MS. FENT: Yes. She had given me her  
9 impact statement and I had read that.

10 SENATOR KNOTTS: Okay. Did you not  
11 feel obligated by reading that impact statement  
12 prior to coming into the courtroom that there was  
13 things in her statement that you may -- would be  
14 able to verify to the judge to give a more  
15 seriousness -- impact of her statement to the  
16 judge?

17 MS. FENT: There was no indication that  
18 the truth of what she was saying was at question.  
19 This -- the defendant was pleading guilty to  
20 inflicting --

21 SENATOR KNOTTS: I understand that.

22 MS. FENT: -- great bodily injury upon  
23 a child, and this mother who lives with the child  
24 day in and day out and can speak more eloquently  
25 than I could as to seeing those effects was going

1 to state to the judge those effects.

2 SENATOR KNOTTS: I understand that,  
3 and -- and -- but as the state prosecuting  
4 attorney, don't you feel an obligation to back up  
5 your -- your victim by at least giving the judge  
6 some backup testimony that what the victim is  
7 saying is -- has some validity and the seriousness  
8 of this case?

9 MS. FENT: The truth of what she was  
10 saying was never challenged.

11 SENATOR KNOTTS: I'm not talking about  
12 being challenged. At that point in time nothing  
13 had been said by the defendant. But don't you feel  
14 as a prosecutor that everything that you can back  
15 up to give to the judge would benefit the judge in  
16 making a -- a different decision than what he made?

17 MS. FENT: How I proceeded on this case  
18 is exactly how I proceed on every other plea and is  
19 the general practice of solicitors across this --  
20 across the country and across the state in how the  
21 facts are presented at a guilty plea.

22 SENATOR KNOTTS: Well, I've read your  
23 testimony before the judge, and I've read the  
24 victim -- the victim's statement before the judge,  
25 and, I mean -- and I -- I understand what's going

1 on, but it just seems to me the family has been  
2 made a victim twice. And the state -- it seems to  
3 me that she gave a better -- a better prosecutorial  
4 statement than you did, and you were the one that  
5 was supposed to be in charge of presenting the  
6 case.

7 And it just seems to -- with the way  
8 you say "I can't talk about this, I can't talk  
9 about that," victims in this state shouldn't have  
10 to go through that, and it just seems like that  
11 it -- I've seen solicitors stand there and whenever  
12 they're really interested in getting a tough  
13 sentence, they go at it all -- all -- all fours.

14 To stand before a judge and nolle pros  
15 one of the two cases that -- obviously it happened  
16 in a day care center, so there was nothing --  
17 nothing that really bad with that case, and a judge  
18 sitting here with the prosecutor drop -- nolle  
19 prosing one case and -- and not really pushing as  
20 hard as the victim on the other causes concern to  
21 the judicial system.

22 This victim should have never had to go  
23 through that, and whether -- we're not here to cast  
24 blame. We're just here to find the facts of where  
25 the ball was dropped so that we can help in the

1 future ensure that, you know, prosecutors in this  
2 state needs to -- to present all the case and not  
3 just -- it's not the victim's advocate that just  
4 defends the victim. It's the prosecutor too  
5 because they are your witnesses and they're the  
6 people that -- reason you're in the courtroom.

7 And it just seems to me that this lady  
8 had to go through a lot of testimony today she  
9 shouldn't have had to go through. Had you  
10 presented the case that she presented, I have no  
11 doubt in my mind you standing there presenting that  
12 case that she presented, the lady would be in jail  
13 today. I have no doubt about it.

14 And I don't know how long you've had --  
15 had the case, but it -- were you ever -- more  
16 interested in getting a guilty plea and getting it  
17 off the books or -- as to why you nolle prossed the  
18 other case? Could you tell me why -- why you would  
19 nolle pros a case that has no problem with it?

20 MS. FENT: Number one, I'm concerned  
21 with justice. I take --

22 SENATOR KNOTTS: I am too.

23 MS. FENT: I take an oath to see that  
24 justice is done. Not to move cases, not to seek  
25 convictions, but to see that justice is done. In

1     this case justice was a conviction. And as in this  
2     case, as you heard Judge Goode say, he knew me to  
3     be asking for a substantial sentence, and he knew  
4     me -- that to mean that I was asking for a jail  
5     sentence.

6                     There is no case that I could speak  
7     more eloquently than the victims who suffer the  
8     injuries that they do in the cases that I deal  
9     with. So she did speak more eloquently than I did.  
10    My job was to present the facts of the case, and  
11    her job in -- being given an opportunity to give  
12    the victim impact statement is to tell the judge  
13    how this crime impacted her and impacted her  
14    daughter, and that's exactly what -- what she did.  
15    So she -- she did speak more eloquently than I did.  
16    But we were standing in front of -- of the Court  
17    asking for, as the -- as the judge said, a  
18    substantial sentence, and he understood that to be  
19    jail time.

20                    As to the nolle proying of the charge,  
21    as you've heard, that would be the difference  
22    between a 20 year sentence and a 30 year sentence,  
23    and we're not standing here arguing that 30 years  
24    should have been given instead of 20 years.  
25    Clearly the issue is -- is a reconsideration of a



1 probation sentence up to the range of 20 years.

2 SENATOR KNOTTS: And you do understand  
3 there's many a people that have been before the  
4 judges in this state with multiple plea -- pleas to  
5 multiple cases.

6 MS. FENT: Sure. Most of the cases are  
7 disposed of by plea in our state.

8 SENATOR KNOTTS: And there are multiple  
9 cases sometimes, like two or three counts or  
10 something.

11 MS. FENT: Correct.

12 SENATOR KNOTTS: I don't understand why  
13 this wouldn't have been a guilty plea to two counts  
14 which would have heightened the indication that it  
15 was a -- a real serious -- that this happened in a  
16 day care center -- center and it was a serious --  
17 and that the prosecutor was pushing for jail time.  
18 Did you ever ask for jail time or did you just say  
19 a substantial sentence?

20 MS. FENT: As you heard judge -- the  
21 judge say, that I was asking for a substantial  
22 sentence and he knew that to mean a jail sentence.  
23 What you also cannot read from this transcript, a  
24 cold transcript, is the tone of my voice as I  
25 detailed every injury that this child suffered.

1 That's -- clearly in a cold transcript the facts of  
2 the injuries are there, but my tone in -- in  
3 telling the Court of these injuries and the tone in  
4 my response to the defense attorney's request for  
5 probation is not -- doesn't show on this  
6 transcript.

7 But as I said, you know, Judge Goode  
8 indicated that he knew I was asking for substantial  
9 time and that was a jail sentence.

10 SENATOR KNOTTS: Have you ever heard a  
11 solicitor say, "I adamantly oppose probation in  
12 this case and would recommend a jail sentence"?

13 MS. FENT: I have heard that.

14 SENATOR KNOTTS: Why didn't you do that  
15 in this case?

16 MS. FENT: It was clear in my  
17 recitation of the facts and it was clear in my  
18 argument that is what we were asking for. It is  
19 clear also in the victim impact statement that she  
20 was asking for a maximum sentence.

21 SENATOR KNOTTS: Don't you think it  
22 would have been a lot more clearer if you'd have  
23 just simply said, "Judge, I oppose probation in  
24 this case and recommend a jail sentence"? And  
25 that's done in cases all the time by solicitors

1 throughout this state when they adamantly oppose  
2 probation.

3 MS. FENT: And the sentence is up to  
4 the judge. Regardless of what the solicitor asks  
5 for, that ultimate decision is -- is the judge's.  
6 Even if we come in and ask -- ask for probation or  
7 recommend or negotiate probation, a judge can say,  
8 "Solicitor, that is inappropriate in this case. I  
9 am not going along with your recommendation of  
10 probation. I am not going along with your  
11 negotiation of probation. The facts are  
12 inappropriate to that."

13 So regardless of what we stand up and  
14 say, the facts are presented to a judge and -- and  
15 that judge makes the -- the appropriate decision.

16 SENATOR KNOTTS: And I understand that,  
17 and I hated to have to ask the victims a question  
18 that I had to ask them or -- but I wanted to make  
19 sure that we knew the full facts of the case to  
20 find out where the ball was dropped, and if the  
21 judge had a clear -- a clear photograph of what  
22 actually the fierceness of this was and what the  
23 solicitor's intention was, what the solicitors  
24 wanted -- I mean, he doesn't have a crystal ball,  
25 and if you're the prosecutor and you don't tell him

1     what you want or what you oppose, he -- he don't  
2     have to give you what you want, but at least "I  
3     oppose probation in this case. The state opposes  
4     probation in this case, Your Honor."

5                   CHAIRMAN McCONNELL: Is there any other  
6     questions?

7                   Representative Clemmons.

8                   REPRESENTATIVE CLEMMONS: Thank you,  
9     Mr. Chairman.

10                  First of all, Ms. Fent, as an assistant  
11     solicitor, thank you for your service to the state  
12     of South Carolina. I have just one or two  
13     questions for you, and they go to your motion for  
14     reconsideration of the sentence that was handed  
15     down by Judge Goode.

16                  If I recall correctly, did you testify  
17     that you submitted your motion two days following  
18     the trial -- the hearing? Excuse me.

19                  MS. FENT: Correct.

20                  REPRESENTATIVE CLEMMONS: And was that  
21     the first time you've ever made such a motion in  
22     court?

23                  MS. FENT: Yes.

24                  REPRESENTATIVE CLEMMONS: What -- what  
25     led to that -- to the uniqueness of that one-time

1 motion?

2 MS. FENT: I guess -- again, because I  
3 struggle with my -- with my ethical obligations and  
4 not -- and not discussing the facts, and if we have  
5 a rehearing, all of the reasons for it would be  
6 placed on the record at that time. So all I can  
7 say right now is that we are clearly asking him to  
8 reconsider that sentence of probation.

9 REPRESENTATIVE CLEMMONS: I understand  
10 and respect your obligations.

11 The -- have you ever received the order  
12 that was mentioned by Judge Goode regarding his  
13 decision to reconsider or to have a hearing to  
14 reconsider the motion -- or reconsider the  
15 sentence?

16 MS. FENT: No, I have not.

17 REPRESENTATIVE CLEMMONS: You've never  
18 seen that order in writing?

19 MS. FENT: Never.

20 REPRESENTATIVE CLEMMONS: Would there  
21 normally be an order in writing for such a decision  
22 by the Court?

23 MS. FENT: Well, in that I've stated  
24 this is the first time I've filed a motion for  
25 reconsideration, I don't think I can answer the

1 question in terms of normal. I can say that my  
2 motion was a single page. There was not an order  
3 attached, and nor did I put a place at the bottom  
4 of my motion for the judge to sign either granting  
5 or denying my request for rehearing.

6 So I know that there wasn't an order as  
7 a part of my motion. It was strictly just a  
8 single-page motion requesting rehearing.

9 REPRESENTATIVE CLEMMONS: Do you have  
10 the -- excuse me.

11 Ms. Shuler, do we have a copy of that  
12 motion in the record?

13 MS. SHULER: No, sir, we do not.

14 REPRESENTATIVE CLEMMONS: Ms. Fent, do  
15 you have a copy of that motion with you today?

16 MS. FENT: The motion for  
17 reconsideration?

18 REPRESENTATIVE CLEMMONS: The motion  
19 for reconsideration.

20 MS. FENT: I do not. I do not.

21 REPRESENTATIVE CLEMMONS: Could you --  
22 could you make arrangements to have a copy of that  
23 sent to us for inclusion in the record?

24 MS. FENT: Certainly.

25 REPRESENTATIVE CLEMMONS: Upon receipt,

1 Mr. Chairman, I'd request that that document be  
2 included in -- in the record.

3 CHAIRMAN McCONNELL: Is there any  
4 objection to that document being included? There  
5 being none, so ordered.

6 REPRESENTATIVE CLEMMONS: Thank you.

7 Now, again, Ms. Fent, when were you  
8 notified and what were the circumstances of your  
9 notification of Judge Goode's decision to  
10 reconsider his sentence?

11 MS. FENT: It was Thursday afternoon.  
12 I received a phone call from his law clerk  
13 indicating that they wanted to set this for hearing  
14 as soon as possible.

15 REPRESENTATIVE CLEMMONS: Was that  
16 Thursday, February the 12th?

17 MS. FENT: Just last week, yeah.

18 REPRESENTATIVE CLEMMONS: Can you --  
19 can you better pinpoint the -- the time frame that  
20 you received that call on the 12th?

21 MS. FENT: I heard Michelle Gaddie's  
22 testimony, and the best that I can say, it would be  
23 very near that time because the first phone call I  
24 made was to the victim advocate, to Jan Knobles,  
25 and said, you know, "Try to notify the victims as

1 soon as possible to find out if they're available  
2 and in town for this hearing."

3 And I know that Jan as soon as she  
4 spoke with the Gaddies called me back. So it would  
5 have been close in time to whenever Michelle Gaddie  
6 testified that she got notification from our  
7 office.

8 REPRESENTATIVE CLEMMONS: So from the  
9 time you received notice from Judge Goode's  
10 office -- was that from Judge Goode directly?

11 MS. FENT: No, from his law clerk.

12 REPRESENTATIVE CLEMMONS: From his law  
13 clerk?

14 MS. FENT: Uh-huh.

15 THE CLERK: From Judge Goode's law  
16 clerk to the time that your staff contacted the  
17 victim, how much time transpired?

18 MS. FENT: 15 minutes, at the most. It  
19 was just me calling Jan Knobles, Jan calling the --  
20 the victims.

21 REPRESENTATIVE CLEMMONS: Thank you so  
22 much.

23 MS. FENT: Okay.

24 CHAIRMAN McCONNELL: Let me ask you  
25 just a couple of questions very quickly.



1                   In the transcript, in light of the  
2     questions asked of you, after Ms. Gaddie went  
3     through all of the circumstances -- I'm on page 22.  
4     She says -- and I quote -- "Kendra and our family  
5     now have amounts to a lifetime of difficulties of  
6     struggles ahead." And then on down in the  
7     transcript over to the next page she says, "I  
8     humbly ask the court to allow a clear message to be  
9     sent: that crimes against our children in this  
10    society will no longer be condoned or tolerated."  
11    And I'm quoting again. "I ask that the maximum  
12    sentence allowed by current law be instituted."

13                   Did you hear her make that plea in  
14    court?

15                   MS. FENT: Yes.

16                   CHAIRMAN McCONNELL: Do you know of any  
17    way you could have said it better?

18                   MS. FENT: No.

19                   CHAIRMAN McCONNELL: The crime here was  
20    16-3-95. It says, "It is unlawful to inflict great  
21    bodily injury upon a child. A person who violates  
22    this subsection is guilty of a felony and, upon  
23    conviction, must be imprisoned not more than 20  
24    years."

25                   Then down in section C -- and my

1 question comes from this and I'll read it back to  
2 you. "For purposes of this section, 'great bodily  
3 injury' means bodily injury which creates a  
4 substantial risk of death or which causes serious  
5 or permanent disfigurement, or protracted loss or  
6 impairment of the function of any bodily member or  
7 organ."

8 To your recollection did anyone in that  
9 courtroom contest that this child had not suffered  
10 some form of what this legal description in this  
11 law is that day?

12 MS. FENT: The facts were not  
13 contested.

14 CHAIRMAN McCONNELL: Thank you.

15 Any further questioning?

16 Thank you, ma'am.

17 Next witness.

18 MS. SHULER: Mr. Jerry Finney.

19 CHAIRMAN McCONNELL: Mr. Finney, are  
20 you in the audience?

21 MR. FINNEY: I am.

22 CHAIRMAN McCONNELL: All right, sir.  
23 Back behind the pole there.

24 MR. FINNEY: Yes, sir.

25 CHAIRMAN McCONNELL: If you'd be so

1 kind to raise your right hand. Do you swear to  
2 tell the truth, the whole truth, and nothing but  
3 the truth, so help you God?

4 MR. FINNEY: I do.

5 CHAIRMAN McCONNELL: Thank you, sir.

6 MS. SHULER: Mr. Finney, would you  
7 describe your role in the Talisha Smith matter.

8 MR. FINNEY: I am a criminal defense  
9 lawyer here in Columbia -- thank you -- and I was  
10 retained to represent her on charges brought I  
11 believe stemming back to March of 2008.

12 MS. SHULER: If you would, show  
13 Mr. Finney his affidavit.

14 MR. FINNEY: Thank you.

15 MS. SHULER: Do you recognize your  
16 affidavit?

17 MR. FINNEY: I do.

18 MS. SHULER: I'd like to offer  
19 Mr. Finney's affidavit be made a part of the record  
20 as an exhibit.

21 CHAIRMAN McCONNELL: Is there any  
22 objection? Being none, so ordered.

23 (EXH. 5, Affidavit of Jerry Leo Finney,  
24 marked for identification.)

25 MS. SHULER: Mr. Finney, could you

1 briefly describe the sentencing hearing that day.  
2 Were there negotiated pleas -- a negotiated plea  
3 for Ms. Smith?

4 MR. FINNEY: The -- it was a negotiated  
5 plea with respect to the fact that one of the  
6 charges, which has already been discussed on the  
7 record -- I believe it's -- I will refer to it as a  
8 proximity charge -- was nolle prossed by the  
9 solicitor in exchange for the plea to the great  
10 bodily harm charge.

11 MS. SHULER: Was there any medical  
12 evidence presented?

13 MR. FINNEY: None whatsoever.

14 MS. SHULER: And what arguments did you  
15 make in terms of sentencing for your client?

16 MR. FINNEY: I believe everyone has the  
17 record. I have obtained a copy of the record, and  
18 I asked for mercy for my client. I certainly --  
19 this is a guilty plea, and I was retained by my  
20 client in March. She was not charged with both  
21 crimes together. She was originally charged in  
22 March with one crime. Then she was released on  
23 bond, and sometime later, I think approximately a  
24 month or two later, she was arrested again on the  
25 second charge.

1 I was retained on both of those  
2 charges. Sometime in the summer of 2008, I  
3 submitted what's called a Rule 5 and Brady motion  
4 to the solicitor which is a document to receive the  
5 evidence in the case. I received the evidence in  
6 the case sometime late summer, early fall,  
7 discussed the evidence with my client, and then  
8 scheduled -- and advised my client accordingly and  
9 immediately scheduled it for a guilty plea, never  
10 indicating that we wanted a trial. It was always a  
11 guilty plea.

12 MS. SHULER: At the guilty plea -- and  
13 you've reviewed the transcript as well -- you heard  
14 Judge Goode make comments about the war and the  
15 military. Did you perceive those comments to be  
16 offensive to the Gaddies?

17 MR. FINNEY: No, I did not.

18 MS. SHULER: Let me ask you about the  
19 motion for rehearing. Did you receive a copy of  
20 the solicitor's motion for rehearing?

21 MR. FINNEY: I did.

22 MS. SHULER: And when did you receive  
23 that?

24 MR. FINNEY: In fact, I was looking  
25 through my files, and it appears that I received

1     this on December the 10th. It is signed on  
2     December the 10th by Margaret Fent, the solicitor,  
3     and a copy was faxed to my office on the same day,  
4     December 10th, 2008. And I have that with me.

5                 MS. SHULER: I'd like to ask that we  
6     make a copy of that and make it -- mark it as an  
7     exhibit for the record.

8                 CHAIRMAN McCONNELL: Is there any  
9     objection? There being none, so ordered.

10                MR. FINNEY: May I have a copy. Thank  
11     you.

12                MS. SHULER: Was that order -- was that  
13     motion signed in any way in handwriting by Judge  
14     Goode granting that motion?

15                MR. FINNEY: No, it was not.

16                MS. SHULER: When did you learn that  
17     Judge Goode wanted to have a rehearing in this  
18     matter?

19                MR. FINNEY: Last Thursday.

20                MS. SHULER: All right. Approximately  
21     what time did you learn?

22                MR. FINNEY: It would have been around  
23     the same time that Ms. Gaddie testified she was  
24     informed of it. The specific time, I do not know.

25                MS. SHULER: Perhaps in the afternoon.

1 MR. FINNEY: In the afternoon.

2 (EXH. 6, Motion to Reconsider Sentence  
3 for State vs. Talisha Lavette Smith, marked for  
4 identification.)

5 CHAIRMAN McCONNELL: All right. Any  
6 questions?

7 The senator from Charleston.

8 SENATOR FORD: Attorney, explain to me  
9 when -- when you request -- request a rehearing,  
10 how much time usually lapse before that happen? Or  
11 can you say this one was grant -- I mean, asked for  
12 December 13th?

13 MR. FINNEY: Well, it was -- it was  
14 written -- it was filed on December the 10th.

15 SENATOR FORD: December 10th?

16 MR. FINNEY: Yes, sir.

17 SENATOR FORD: When was that trial?

18 MR. FINNEY: The guilty plea was  
19 December the 8th.

20 SENATOR FORD: Okay. Two days later.  
21 Now, we got a major shortage of judges in South  
22 Carolina, and a judge got to clear his calender for  
23 stuff like this. So you're talking about two  
24 months. Would that be about right or what?

25 MR. FINNEY: Yes, sir, I -- I think

1     that as a lawyer I've had motions that I filed  
2     myself and motions that I have responded to that  
3     have taken a lot longer than two months.

4                 SENATOR FORD:  As a victim I've been --  
5     I mean, not as a victim?  As a what?  I've been  
6     waiting a long time for cases too where I wanted to  
7     hear my voice.  But two months is not that long,  
8     right?

9                 MR. FINNEY:  No.

10                CHAIRMAN McCONNELL:  Any other  
11     questions?

12                Representative Mack.

13                REPRESENTATIVE MACK:  Thank you,  
14     Mr. Chairman.

15                In listening to these -- I listened to  
16     you saying that you went and you asked for mercy,  
17     so as -- you went in recognizing at least in your  
18     mind representing your client the guilt there.  I  
19     wanted to ask you, in your legal career have you  
20     ever asked for mercy for a client that you  
21     recognized in your mind as being guilty of the  
22     crime and seeing a sentencing such as this, a  
23     similar --

24                MR. FINNEY:  I look upon it is as a  
25     piece of property.  I was taught in law school by



1 my property professor that -- know that every piece  
2 of property is unique. As a criminal defense  
3 lawyer every case is unique, and no two cases are  
4 identical. And there is certainly no case in my  
5 experience that I can compare this case to.

6 I can only tell you that when I was  
7 retained by my client, I did my job in requesting  
8 the evidence from the solicitor's office. Once I  
9 obtained the evidence from the solicitor's  
10 office -- and there's been a lot of discussion with  
11 respect to medical records. To give the Committee  
12 just an idea of some of the medical records that  
13 were provided to me in discovery and the size and  
14 the volume of them in this case (indicating).

15 And after being able to review these  
16 documents and all other documents that the  
17 solicitor sent to me with my client -- my clients  
18 rely on me for my advice, and my advice in this  
19 case was to plead guilty. She agreed with my  
20 advice, and, again, we never once indicated that we  
21 wanted a trial or to delay the matter. I believe  
22 she was originally arrested in March, and she pled  
23 guilty in December.

24 I don't come to the legislature often.  
25 This is very unusual for me to come to the House

1 and the Senate and appear before the committee, but  
2 I go to the courthouse often. And people who don't  
3 go to the courthouse might think that's a long  
4 period of time. That's not a long period of time.  
5 That's a very short period of time for a case to  
6 be -- to start and end, early December.

7 We indicate -- I indicated it was a  
8 plea. They set it for a plea and she pled December  
9 the 8th.

10 CHAIRMAN McCONNELL: Any other  
11 questions?

12 Thank you so much.

13 MR. FINNEY: Thank you.

14 CHAIRMAN McCONNELL: Next. The  
15 staff --

16 MS. SHULER: Paul Newell.

17 CHAIRMAN McCONNELL: Mr. Newell, if  
18 you'd come forward. Raise your right hand, please,  
19 sir. Do you swear to tell the truth, the whole  
20 truth, and nothing but the truth, so help you God?

21 MR. NEWELL: I do.

22 CHAIRMAN McCONNELL: Thank you, sir.  
23 Please answer the questions Ms. Shuler has for you.

24 MS. SHULER: Mr. Newell, who are you  
25 employed with?

1 MR. NEWELL: South Carolina Judicial  
2 Department.

3 MS. SHULER: All right. And do you  
4 clerk for a specific judge?

5 MR. NEWELL: Judge Kenneth Goode.

6 MS. SHULER: All right. How long have  
7 you been clerking for Judge Goode?

8 MR. NEWELL: Since about mid August.

9 MS. SHULER: All right. Are you  
10 familiar with the State versus Talisha Smith case?

11 MR. NEWELL: I am.

12 MS. SHULER: All right. Were you  
13 present when Ms. Fent brought a motion for  
14 reconsideration to Judge Goode?

15 MR. NEWELL: To my recollection we were  
16 on the bench preparing for court I guess two days  
17 later. A document was presented by Assistant  
18 Solicitor Fent regarding a reconsideration hearing,  
19 upon which the judge and Ms. Fent went into some  
20 discussion. I went back to my clerical work, and  
21 then after that, it was my understanding that that  
22 motion was granted and that we would have the  
23 hearing next time we were in Richland County.

24 MS. SHULER: Did you ever see an order  
25 or prepare an order for the judge's signature?

1 MR. NEWELL: I did not.

2 MS. SHULER: Have you ever seen an  
3 order granting Ms. Fent's request for a hearing in  
4 this matter?

5 MR. NEWELL: I have not.

6 CHAIRMAN McCONNELL: All right. Any  
7 questions?

8 Representative Clemmons.

9 REPRESENTATIVE CLEMMONS: Thank you.

10 With regard to that -- the decision  
11 to -- of Judge Goode to reconsider his sentencing,  
12 when did you first learn of that decision on Judge  
13 Goode's part?

14 MR. NEWELL: I -- it was my  
15 understanding that it was decided on that day upon  
16 presentation.

17 REPRESENTATIVE CLEMMONS: When Ms. Fent  
18 was present in the courtroom?

19 MR. NEWELL: Yes.

20 REPRESENTATIVE CLEMMONS: Were -- were  
21 you surprised to hear today that Ms. Fent had no  
22 recollection of it being --

23 MR. NEWELL: I actually was.

24 REPRESENTATIVE CLEMMONS: -- approved  
25 at that time?

1                   We heard testimony today from Ms. Fent  
2     that she received a phone call from you on February  
3     the 12th regarding that motion --

4                   MR. NEWELL:   That's correct.

5                   REPRESENTATIVE CLEMMONS:  -- is that  
6     correct?

7                   What precipitated that phone call?

8                   MR. NEWELL:   Judge Goode asked me to  
9     make that phone call.

10                  REPRESENTATIVE CLEMMONS:  Okay.  And  
11     had he asked you previous -- previously to that day  
12     to make arrangements for a hearing on that motion?

13                  MR. NEWELL:   No.  Like I said, it was  
14     my understanding that our next term in Richland  
15     County it would be scheduled.

16                  REPRESENTATIVE CLEMMONS:  And where did  
17     you receive that understanding from?

18                  MR. NEWELL:   From just the normal  
19     process of how I've learned that things work as --  
20     as being a clerk for four months.

21                  REPRESENTATIVE CLEMMONS:  So did  
22     anybody talk to you about that?

23                  MR. NEWELL:   No, they did not.

24                  REPRESENTATIVE CLEMMONS:  You were just  
25     expecting that to happen?

1                   MR. NEWELL: Well, when things are  
2 scheduled, they're scheduled through the  
3 solicitor's office.

4                   REPRESENTATIVE CLEMMONS: Okay. So you  
5 were expecting Ms. Fent to schedule that; is that  
6 correct?

7                   MR. NEWELL: That's my understanding.

8                   REPRESENTATIVE CLEMMONS: Okay. Thank  
9 you very much. That's all I have.

10                  CHAIRMAN McCONNELL: Yes, sir. Any  
11 other questions?

12                  The senator from Charleston.

13                  SENATOR FORD: The solicitor keep the  
14 docket, correct?

15                  MR. NEWELL: That's correct.

16                  SENATOR FORD: So what would be wrong  
17 with the judge saying that the next available --  
18 next available date, right?

19                  MR. NEWELL: Correct.

20                  SENATOR FORD: Because when y'all come  
21 to Richland, that don't mean you going to grab it  
22 right away?

23                  MR. NEWELL: Correct.

24                  SENATOR FORD: Okay. So how long -- in  
25 these situations how long are -- you know, lawyers

1 have to wait for their clients to come back for a  
2 retrial?

3 MR. NEWELL: I've only been with the  
4 judge since August. I've never dealt with a  
5 situation like this.

6 CHAIRMAN McCONNELL: Any other  
7 questions?

8 MR. SELLERS: I've got one.

9 CHAIRMAN McCONNELL: Mr. Sellers.

10 MR. SELLERS: How did you -- how did  
11 you conclude -- what made you conclude the judge  
12 had granted the solicitor's motion?

13 MR. NEWELL: Just from the conversation  
14 and the language that I came to an assumption and  
15 understood that it was granted.

16 MR. SELLERS: So it was nothing that  
17 you were told; you just assumed that.

18 MR. NEWELL: I honestly was not paying  
19 that close attention due to my clerical work that I  
20 was doing.

21 MR. SELLERS: So you just assumed it  
22 was granted?

23 MR. NEWELL: It was my understanding  
24 that it was granted.

25 MR. SELLERS: And that's what I'm

1     trying to understand. How did you come to that  
2     understanding? Who told you? What conversation  
3     did you have? Who told you that the motion had  
4     been granted?

5                   MR. NEWELL: Well, the judge -- the  
6     judge told me it had been granted.

7                   MR. SELLERS: When?

8                   MR. NEWELL: As I recall, that day on  
9     the bench.

10                  MR. SELLERS: That day being a few days  
11     after the original hearing on the -- on the -- the  
12     guilty plea?

13                  MR. NEWELL: Yes.

14                  MR. SELLERS: And did he ask you to  
15     draw an order?

16                  MR. NEWELL: No, he did not.

17                  CHAIRMAN McCONNELL: Any other  
18     questions?

19                  Professor.

20                  PROFESSOR FREEMAN: Is it customary to  
21     draw an order granting a motion like that?

22                  MR. NEWELL: Not -- not for all  
23     motions, no. And like I said, this is the first  
24     time I had dealt with a motion for reconsideration  
25     in something like this.



1 CHAIRMAN McCONNELL: Any other  
2 questions?

3 The senator from Lexington.

4 SENATOR KNOTTS: So what you're  
5 saying -- thank you, Mr. Chairman.

6 So what you're saying is that the  
7 solicitor came back with a piece of paper asking  
8 for a reconsideration?

9 MR. NEWELL: It was regarding the  
10 reconsideration --

11 SENATOR KNOTTS: Regarding the  
12 reconsideration.

13 MR. NEWELL: -- from what I understand.

14 SENATOR KNOTTS: And she and the judge  
15 had a discussion?

16 MR. NEWELL: Yes.

17 SENATOR KNOTTS: And when the  
18 discussion was over, there was an understanding  
19 there would be a reconsideration, and it's up to  
20 the solicitor's office to set it --

21 MR. NEWELL: That's correct.

22 SENATOR KNOTTS: -- when you got back  
23 in court --

24 MR. NEWELL: That's correct.

25 SENATOR KNOTTS: -- when you got back

1 in the circuit?

2 MR. NEWELL: That's correct.

3 SENATOR KNOTTS: And is there any  
4 procedures set in place to -- to schedule a  
5 rehearing? I mean, any time frames or any time you  
6 have to give for notification or --

7 MR. NEWELL: Well, when we had -- we  
8 made the call to have the reconsideration bumped  
9 up, we contacted Judge Childs' office because she  
10 was the chief administrative judge in Richland  
11 County, and then her law clerk in turn contacted  
12 court administration, and then I contacted  
13 Mr. Finney and Ms. Fent regarding scheduling, I  
14 guess a special time for reconsideration because  
15 that was a chambers week.

16 SENATOR KNOTTS: So if they would have  
17 had time another week or two in the court -- in the  
18 circuit, do you feel that they would have went on  
19 and had a reconsideration at that time or was the  
20 reconsideration not heard because of the fact that  
21 he was out of circuit?

22 MR. NEWELL: It -- it was my  
23 understanding that it was to come in front of us  
24 our next term of court in Richland County.

25 CHAIRMAN McCONNELL: Representative

1 Delleney -- or Clemmons, excuse me.

2 REPRESENTATIVE CLEMMONS: Thank you,  
3 Mr. Chairman.

4 Sir, I'm a little confused. I asked  
5 you a few minutes ago when the first time was that  
6 Judge Goode asked you or told you that he had  
7 decided to schedule a hearing in this matter. And  
8 your response to me, if I recall correctly, was the  
9 first time you heard that was the day that you made  
10 the phone calls.

11 MR. NEWELL: Right.

12 REPRESENTATIVE CLEMMONS: Okay. And  
13 then I heard a response to Mr. Sellers' question  
14 that the judge had told you at some time prior to  
15 that that he had made that decision.

16 MR. NEWELL: But that was for us to  
17 schedule. I did not think it was our  
18 responsibility to schedule once it was made there  
19 in Richland County.

20 REPRESENTATIVE CLEMMONS: Okay. I want  
21 to be absolutely clear because this is very  
22 important --

23 MR. NEWELL: Uh-huh.

24 REPRESENTATIVE CLEMMONS: -- that this  
25 point is a very important point. At what time did

1 Judge Goode -- or when did Judge Goode tell you so  
2 that you clearly understood that he had made a  
3 decision to hold a hearing to grant Ms. Fent's  
4 motion to reconsider the sentence?

5 MR. NEWELL: Could you -- could you  
6 repeat that question.

7 REPRESENTATIVE CLEMMONS: I'll try.  
8 When was the first time that Judge Goode told you  
9 that he had decided to reconsider his order -- his  
10 sentencing order and convene a hearing upon  
11 Ms. Fent's motion?

12 MR. NEWELL: That day. The day --

13 REPRESENTATIVE CLEMMONS: And --

14 MR. NEWELL: The 10th.

15 REPRESENTATIVE CLEMMONS: The 10th of  
16 December?

17 MR. NEWELL: Uh-huh.

18 REPRESENTATIVE CLEMMONS: Thank you  
19 very much.

20 CHAIRMAN McCONNELL: Any other  
21 questions?

22 Thank you, sir.

23 COURT REPORTER: Mr. Newell, could you  
24 spell your last name, please.

25 MR. NEWELL: N-E-W-E-L-L.

1                   CHAIRMAN McCONNELL: Judge Goode, at  
2 this point staff informs me that's all of the  
3 witnesses that they have. So I'd be happy to hear  
4 from you on anything in this part before we go to  
5 the next part.

6                   JUDGE GOODE: Yes, sir. First and a  
7 matter that seems to be fresh on everyone's mind is  
8 the order. I have a clear recollection of Ms. Fent  
9 approaching the bench. I was on the bench. I was  
10 not in chambers. And there was no business going  
11 on. And when I say that, it could have been two  
12 minutes between pleas, but -- in other words, she  
13 wasn't interrupting anyone or anything of that  
14 nature.

15                   But she approached the bench asking  
16 permission, if I remember correctly, respectfully  
17 that "This is a motion to reconsider in the  
18 Smith/Gaddie case," and she reached over the bar of  
19 the bench and put it directly in front of me and  
20 asked, "Will you hear it?" I said sure. I've  
21 never refused a request to reconsider a sentence,  
22 and I haven't.

23                   And I initially thought that I had  
24 signed a document, thought it had an order attached  
25 to it, and reflection, I'm not sure if I signed it

1 or not. Excuse me. But there is absolutely no  
2 question that she came up and personally put it on  
3 my desk in front of me, told me what it was. "Will  
4 you do it?" And my response was, "Sure." I don't  
5 know if I said I always do, but that is my policy.

6 I think if you -- if there were some  
7 way to check the records, you will find that I have  
8 never refused a request to reconsider a sentence if  
9 someone that feels it was unjust. And as I  
10 indicated earlier, I've read the transcript now,  
11 and I certainly feel this is an appropriate case  
12 for review of the sentence.

13 The -- one other thing that I would  
14 like to comment on is -- and this is small, but  
15 it's -- whenever I have a really difficult case I  
16 do put my head in my hands. I've been known to go  
17 backwards in the chair because these to me are  
18 difficult decisions. They're life altering for  
19 everyone who is in front of me, and I don't take  
20 them lightly. I don't render rulings in situations  
21 without thinking.

22 I may well have put my hand in my face.  
23 I may have turned in the chair. I don't have a  
24 recollection of any of that, but that is consistent  
25 with my mannerisms when I'm making a consideration

1 and, as the sergeant indicated, trying to fix it  
2 because I always attempt to fix things. I think  
3 to -- within my discretion that I can, that's part  
4 of my job, and -- and this was one that no fix came  
5 to mind.

6 But there's no question of -- to date  
7 when I was presented with the motion to reconsider,  
8 no question at all in my mind that I immediately  
9 responded in the affirmative that I would and that  
10 in a large county such as Richland, four or five  
11 months is -- good or bad, it's just not unusual for  
12 hearings to get up the docket.

13 And my -- when this was scheduled, my  
14 immediate reaction was to schedule a hearing, and  
15 then, as I explained earlier, I reconsidered that  
16 because we have -- or might have to some the  
17 appearance of impropriety. And the integrity of  
18 the Court and the process is extraordinarily  
19 important to me, and I'm humbled to be part of it.

20 CHAIRMAN McCONNELL: I think we've got  
21 a couple members -- the senator from Charleston.

22 SENATOR FORD: Judge, a few years ago  
23 I -- a gentlemen of the judiciary appointed a task  
24 force on crime in South Carolina, and one of the  
25 things we discovered was that we got something like

1 105,000 pending cases. Now, you're a circuit court  
2 judge -- I mean, a -- not a circuit court -- you're  
3 a -- no, not circuit. You're at large. At large.

4 JUDGE GOODE: At large.

5 SENATOR FORD: How many circuits do you  
6 visit per year?

7 JUDGE GOODE: This year is different  
8 because of the budget situation that the entire  
9 country finds itself in.

10 SENATOR FORD: But even before that we  
11 had a major shortage of judges, right?

12 JUDGE GOODE: Yes, sir. I'll -- I  
13 would say I would typically go from six to ten  
14 counties -- different counties during the year.  
15 Sometimes I'll go to the same county several times.  
16 Richland is close to my home county of Fairfield,  
17 and I'm sent here, Lexington, and other counties  
18 that are in close proximity on a pretty regular  
19 basis.

20 But I spent a good bit of time in  
21 Beaufort at one time and Spartanburg and I think  
22 it -- Mark Tally, who does a wonderful job of  
23 assigning the judges, he's got like a -- I think a  
24 huge map of the state, and he has to try to juggle  
25 the judges around the state and has them travel as



1 little as possible but not remain in one space.

2 SENATOR FORD: I saw you hadn't gone to  
3 Charleston. Anyway --

4 MR. NEWELL: Oh, I've been to  
5 Charleston.

6 SENATOR FORD: Now, Judge, just because  
7 you coming to Richland County four months later,  
8 does it necessarily mean that you could try a case  
9 of your choice four months later, or the cases are  
10 set -- isn't the cases set by the solicitor's  
11 office?

12 JUDGE GOODE: They are, but typically I  
13 would be able to a couple weeks before say that I  
14 have a civil matter that I want to hear --

15 SENATOR FORD: This is a civil matter.

16 JUDGE GOODE: Sir?

17 SENATOR FORD: This is a civil matter?

18 JUDGE GOODE: If it becomes a motion, I  
19 think it would -- no, it would -- it would still be  
20 in General Sessions. But that I have a matter that  
21 I want to hear that will probably take sometime and  
22 could they schedule that matter for me and I would  
23 tell them what it was.

24 SENATOR FORD: Okay. So you was in --  
25 you was in Richland County in December, and the

1 next time you would be in Richland County would be  
2 when?

3 JUDGE GOODE: I think it's April.

4 SENATOR FORD: April, and this is when  
5 you will -- this case would be coming up?

6 JUDGE GOODE: Yes, sir.

7 SENATOR FORD: Okay.

8 CHAIRMAN McCONNELL: All right. Any  
9 other questions of the judge?

10 The senator from Lexington.

11 JUDGE GOODE: But before I -- if I  
12 could.

13 CHAIRMAN McCONNELL: Yes, sir. Go  
14 ahead.

15 JUDGE GOODE: I'm not sure of the April  
16 date. I've got folks that keep up with my calendar  
17 more than I do, and I just go where they point me,  
18 and so -- but it was sometime in the future.

19 CHAIRMAN McCONNELL: The senator from  
20 Lexington.

21 SENATOR KNOTTS: Thank you,  
22 Mr. Chairman.

23 Judge, in a -- in cases whenever you  
24 have a plea, they're lined up one right after the  
25 other for the court term, right?

1 JUDGE GOODE: Typically.

2 SENATOR KNOTTS: Typically. You don't  
3 have any information about those pleas or any way  
4 to go and sit down and study the case and you have  
5 to -- do you not have to rely on the evidence  
6 that's presented by the state and the defense, you  
7 know --

8 JUDGE GOODE: Yes.

9 SENATOR KNOTTS: -- in making your  
10 decision?

11 JUDGE GOODE: Yes, sir.

12 SENATOR KNOTTS: You don't have the  
13 ability to call witnesses, do you?

14 JUDGE GOODE: No, sir.

15 SENATOR KNOTTS: Okay.

16 JUDGE GOODE: I can question witnesses,  
17 but I can't call them --

18 SENATOR KNOTTS: You can question  
19 witnesses that have been put before you, but you  
20 cannot call witnesses, right?

21 JUDGE GOODE: That's my understanding,  
22 yes, sir.

23 SENATOR KNOTTS: In this particular  
24 case, it appears to me that the victim did an  
25 eloquent job of stating her position in the case.

1 In fact, a better job than the solicitor's office  
2 did. That's my opinion. But do you feel that  
3 there could have been more information provided to  
4 you by the prosecutor that may would have been  
5 pertinent to the case to help aid a better informed  
6 decision being made?

7 JUDGE GOODE: Well, especially after  
8 seeing the file of Mr. Finney, I would have to  
9 answer yes to that.

10 SENATOR KNOTTS: I know that you have a  
11 big caseload. Was there ever any reason given why  
12 the -- the second charge was nolle prossed or was  
13 it brought up before you? Or do you recall?

14 JUDGE GOODE: If there was a reason, I  
15 do not recall.

16 SENATOR KNOTTS: But it certainly would  
17 have looked a whole lot stronger if there had been  
18 two cases there before you and knowing that it  
19 happened in a day care center?

20 JUDGE GOODE: Yes, sir.

21 SENATOR KNOTTS: And that the solicitor  
22 had not -- nolle prossed one case, did that give  
23 you any indication of -- of a plea negotiation or  
24 possible plea negotiation? Or do you even care  
25 about why it had come before you or just the fact

1     that they get there?

2                   JUDGE GOODE:  I -- I care, but I  
3     consider the charges that are presented to me, and  
4     sometimes, you know -- and I don't know about this  
5     particular case -- they indicate that a particular  
6     charge has been dropped, and I don't remember if  
7     that is the case in this --

8                   SENATOR KNOTTS:  You just don't recall  
9     that?

10                  JUDGE GOODE:  No, sir.

11                  CHAIRMAN McCONNELL:  Any other  
12     questions?

13                  Representative Mack.

14                  REPRESENTATIVE MACK:  Thank you,  
15     Mr. Chairman.

16                  Judge Goode, one of the things -- the  
17     key thing about this process today is to allow you  
18     an opportunity to give your point of view.  Bottom  
19     line it for us.  What is it that you really want --  
20     and the final decision is going to be made by the  
21     legislature.  What do you really want to  
22     communicate to us today about this decision?

23                  JUDGE GOODE:  With more information, I  
24     could make a more informed decision, and I think as  
25     with most decisions, the more information you have

1 to base that decision on, the better. I recognized  
2 two days later that this would be a good case to  
3 reconsider and agreed to do that and letting  
4 Mr. Finney have that order. It doesn't appear that  
5 anybody else has done that.

6 But we don't -- we judges don't keep  
7 those type orders. The court -- the clerk of court  
8 typically keeps those.

9 REPRESENTATIVE MACK: What information  
10 do you feel is lacking -- a lot was made of the  
11 medical records. Would you say -- would you say --  
12 the medical records and some other things, but what  
13 are some of the things you would say in your mind?

14 JUDGE GOODE: I think primarily the  
15 medical records. Whoever made the observation that  
16 Ms. Gaddie made an eloquent presentation, they were  
17 absolutely correct. She did. And I didn't have  
18 the meds -- the documentation from the medical  
19 providers to properly evaluate her assessment of  
20 the situation. I could do that better with that  
21 information. And I would. I can't tell you how I  
22 will sentence, but it would -- this I think is a  
23 case it would make sense.

24 SENATOR FORD: One quick question.

25 CHAIRMAN McCONNELL: I've got

1 Representative Clemmons next.

2 Representative Clemmons.

3 REPRESENTATIVE CLEMMONS: Thank you,  
4 Mr. Chairman.

5 Judge Goode, how many times has your  
6 sentence -- a sentencing order of yours been the  
7 result of a -- or resulted in a motion for  
8 reconsideration?

9 JUDGE GOODE: To the best of my  
10 recollection, Mr. -- Mr. Representative, I don't  
11 think there has ever been a formal motion of  
12 reconsideration on one of my sentences. I would  
13 add to that, however, that there have been  
14 occasions after sentences where the attorney for  
15 the state and the defendant and I have sat down in  
16 my office and have had an informal reconsideration  
17 discussion, but I do not recall ever having a  
18 formal motion to reconsider filed in one of my  
19 cases.

20 REPRESENTATIVE CLEMMONS: So -- so when  
21 you spoke a few moments ago and said that you had  
22 always granted such motions that had been presented  
23 to you, you in fact had never had one until this  
24 case?

25 JUDGE GOODE: It would -- a matter of

1 semantics. As I indicated, they would often end up  
2 in chambers with the discussion between the  
3 parties. Prior to that --

4 REPRESENTATIVE CLEMMONS: That would be  
5 by agreement I suppose between --

6 JUDGE GOODE: Oh, absolutely.

7 REPRESENTATIVE CLEMMONS: -- between  
8 the solicitor and the defense counsel to approach  
9 you because they were in agreement that an issue  
10 needed to be addressed --

11 JUDGE GOODE: And --

12 REPRESENTATIVE CLEMMONS: -- is that  
13 correct?

14 JUDGE GOODE: Yes, sir.

15 REPRESENTATIVE CLEMMONS: But that's  
16 totally different from the type of situation that  
17 you have before you in this case, is it not, where  
18 you have a -- where you have the solicitor -- the  
19 assistant solicitor requesting without the aid and  
20 consent of the defense attorney for  
21 reconsideration?

22 JUDGE GOODE: That -- that would be  
23 different, yes.

24 REPRESENTATIVE CLEMMONS: Okay. I just  
25 want to make sure we're talking about apples and



1 oranges, Judge Goode -- that we're talking about  
2 apples and apples and not apples and oranges.

3 Let's go back for a moment to the day  
4 that your judge -- your law clerk testified that he  
5 was instructed by you to make the phone call to the  
6 assistant solicitor and to the defense attorney to  
7 notify them of your decision to reconsider the  
8 outstanding motion. That -- that was testified to  
9 be February the 12th. Do you recall that day?

10 JUDGE GOODE: Yes.

11 REPRESENTATIVE CLEMMONS: What led to  
12 your -- your request to the law clerk in that  
13 regard?

14 JUDGE GOODE: My initial thought was to  
15 have this matter resolved before today's hearing,  
16 but upon reflection, as I indicated before, I  
17 thought that there would be the appearance of  
18 impropriety on my part, that I was trying to have  
19 an influence on the screening, and I didn't want  
20 even that appearance. There's no one at this time  
21 incarcerated which might would have sped me up, but  
22 that -- I don't think even that would have.

23 REPRESENTATIVE CLEMMONS: So there  
24 wasn't any -- any event on that day of February  
25 12th that -- that led to your decision on that day

1 to instruct your law clerk to make those phone  
2 calls?

3 JUDGE GOODE: No, sir, except to  
4 hopefully make y'all's job easier or give you more  
5 information to work with.

6 REPRESENTATIVE CLEMMONS: We appreciate  
7 that.

8 I -- I believe that we have a -- an  
9 e-mail from Jane Shuler to you, Judge.

10 And I'd ask staff to hand a copy of  
11 that to the judge, if you would.

12 Judge, this is a -- I'd ask you to take  
13 a look at this e-mail and tell me if you recognize  
14 the e-mail.

15 JUDGE GOODE: I recognize the form that  
16 is being used, and we have exchanged recently so  
17 many e-mails that I can't say that I have a -- an  
18 independent recollection of this.

19 REPRESENTATIVE CLEMMONS: This e-mail  
20 is dated February 12th, 2009, is it not?

21 JUDGE GOODE: Yes, sir.

22 REPRESENTATIVE CLEMMONS: Showing  
23 having been sent at 10:59 from Ms. Jane Shuler, who  
24 is counselor to this commission, to yourself,  
25 Judge. Is that your correct e-mail address?

1 JUDGE GOODE: Yes, sir.

2 REPRESENTATIVE CLEMMONS: Okay. And  
3 the purpose of this letter was to send you a copy  
4 of the transcript of the Smith hearing for your  
5 review. Does -- does that help you recall this  
6 particular e-mail, Judge?

7 JUDGE GOODE: It -- it does in that I  
8 certainly remember that she sent me one recently.

9 REPRESENTATIVE CLEMMONS: Okay. Do you  
10 recall receiving that -- or opening that e-mail on  
11 the same date that it was sent?

12 JUDGE GOODE: Now, what -- what day of  
13 the week --

14 REPRESENTATIVE CLEMMONS: That was a  
15 Thursday, February the 12th, 2009.

16 JUDGE GOODE: I would have opened it  
17 that day.

18 REPRESENTATIVE CLEMMONS: Okay. And  
19 did you in fact review the attached transcript of  
20 the hearing that Ms. Shuler had attached to the  
21 e-mail?

22 JUDGE GOODE: Yes, sir. If my  
23 recollection serves me correctly, I actually placed  
24 a call later that day to Mrs. Shuler.

25 REPRESENTATIVE CLEMMONS: Was in fact

1 your first communication from Ms. Shuler from this  
2 commission?

3 JUDGE GOODE: I don't think so. We --  
4 with all due respect, things kind of -- and there  
5 were certain changes in procedure and times and  
6 scheduling that we discussed, and --

7 REPRESENTATIVE CLEMMONS: I'm sorry, I  
8 poorly phrased that. I meant with regard to the  
9 matter before us today, was that your first  
10 communication with Ms. Shuler concerning the --  
11 the -- the Smith hearing?

12 JUDGE GOODE: And I'd have to give the  
13 same answer.

14 REPRESENTATIVE CLEMMONS: Okay.

15 JUDGE GOODE: I just don't recall.

16 REPRESENTATIVE CLEMMONS: You don't  
17 recall.

18 JUDGE GOODE: We were talking very  
19 regularly at that time.

20 REPRESENTATIVE CLEMMONS: Okay.  
21 February the 12th, 2009, that Thursday, is the same  
22 date that's been testified that -- by your law  
23 clerk and Ms. Fent that they received -- that your  
24 law clerk was instructed by you to make the phone  
25 calls giving notice that the motion had been

1 granted and that a hearing needed to be scheduled.

2 Is your testimony still that there was  
3 no event that occurred that day that resulted in  
4 your instructions to your law clerk in that regard,  
5 or could this e-mail have had something to do with  
6 that?

7 JUDGE GOODE: Well, I -- I certainly  
8 don't wish to take issue with a member of the  
9 Commission, but I don't recall and -- that I said  
10 there was no particular event, and -- and I still  
11 say that there wasn't. There was just a confluence  
12 of many things going on, and during that, ill  
13 advisedly, I scheduled a hearing.

14 Actually, I think that call was made  
15 initially to Judge Michelle Childs who is the  
16 administrative judge in Richland County at that  
17 time and asked if they had courtroom space or a  
18 court reporter and that type thing, and -- and,  
19 again, Mr. Newell was making these calls, and I  
20 don't think that -- that he was able to get through  
21 to her. We spoke with her clerk.

22 REPRESENTATIVE CLEMMONS: Thank you,  
23 Judge Goode.

24 Those are all the questions I have,  
25 Mr. Chairman, but I would move that the -- the

1 e-mail reference be included in the exhibits for  
2 today.

3 CHAIRMAN McCONNELL: Is there an  
4 objection? There being none, so ordered.

5 (EXH. 7, 2/12/2009 E-Mail From Jane  
6 Shuler to Judge Goode, marked for identification.)

7 CHAIRMAN McCONNELL: Questions from the  
8 senator from Charleston and then Professor Freeman.

9 SENATOR FORD: The first article I seen  
10 on this was February 10th. I don't know what --  
11 what -- what's being implied, but it seems to me  
12 February 10th was kind of more damaging to you as a  
13 judge than February 12th because on February 10th  
14 you was attacked by The State newspaper, and it  
15 seems to me, if -- if anything would have jogged  
16 your memory about having a hearing, you should have  
17 done it then, at least to me. I don't know. But  
18 apparently it's different with the representative.

19 But let me ask you a question. The  
20 first time you was aware of this case it was -- it  
21 was at the hearing?

22 JUDGE GOODE: The -- are you speaking  
23 of the joint hearing?

24 SENATOR FORD: No, the hearing with --  
25 in this case, the plea hearing.

1 JUDGE GOODE: The first time I was  
2 aware of this case?

3 SENATOR FORD: Yeah.

4 JUDGE GOODE: Yes, sir, that was the  
5 first time I knew -- was made aware.

6 SENATOR FORD: So all this -- all of  
7 this stuff, you wasn't aware of none of it, all of  
8 these packages and everything?

9 JUDGE GOODE: No, sir.

10 SENATOR FORD: So how long it took you  
11 to rule?

12 JUDGE GOODE: I ruled the day I heard  
13 it.

14 SENATOR FORD: Okay. So in my -- okay.  
15 In my mind I'm thinking that somebody had  
16 prepared -- maybe your law clerks or someone that  
17 prepared you with all -- I don't know how judges  
18 work, but I thought what would happen is that  
19 somebody would prepare you on every case which  
20 would be kind of strange anyways because y'all --  
21 y'all take so many.

22 So you've got a lot of cases that  
23 particular day on pleas, and here comes a case  
24 before you that have a whole lot of interest to a  
25 whole lot of people, but you as a judge the first

1 time you seen it was at, let's say, two o'clock  
2 that day, May 10 -- not May 10 -- what, December  
3 10th?

4 JUDGE GOODE: Yes, sir, I think that's  
5 correct.

6 SENATOR FORD: So that's the first time  
7 you'd seen all of this stuff, and so as a judge you  
8 would want to -- you would want all the information  
9 possible for you to make up your -- for you to make  
10 a decision, right?

11 JUDGE GOODE: Yes, sir.

12 SENATOR FORD: Okay. Now, that's what  
13 strange about this whole thing. The people inside  
14 the judiciary know that this is the first time --  
15 not you, but any judges is hearing this particular  
16 case. Let's say a case about me. I thought I  
17 would want -- I thought I would want my lawyer  
18 to -- my guess would be it isn't legal, but at  
19 least make them aware -- make you aware what --  
20 what type case is coming before you that day.

21 So you cold turkey have to rule because  
22 you got other cases and because you got a major  
23 shortage.

24 JUDGE GOODE: Yes, sir. Sometimes they  
25 will actually give a list of the defendants that



1 are coming before me, and sometimes there will be a  
2 list of the charge.

3 SENATOR FORD: So back to what Senator  
4 Knotts was saying, his contention is that, okay, he  
5 in court. You as a judge should have all the  
6 information before you before you make a decision  
7 which means it somebody job to -- the lawyer and  
8 the prosecutor's job is to paint a picture for you,  
9 right? I mean, a mother and a father painted a  
10 beautiful picture. But their job was to paint a  
11 picture and they did not.

12 JUDGE GOODE: There was no medical  
13 evidence presented to -- no subsequent --

14 SENATOR FORD: Now, here we are in this  
15 late date five minutes to 5:00, 200 miles -- I  
16 mean, two hours from here, driving normal, of  
17 course, to Charleston, and we got you, you know,  
18 going through all of this when basically the way I  
19 see it is that, you know, just not you dropping --  
20 I mean, just not the solicitor, but, man, the  
21 General Assembly -- we've been trying to get the  
22 House to help us hire some judges for a long, long  
23 time.

24 We got a major shortage in South  
25 Carolina, and those people who are just visiting

1 here they would -- you know, I'm sure they're  
2 surprised and they think justice is not rendered.  
3 But this is some difficult stuff that you all got  
4 to do. I mean, you know, we want you to do this  
5 wonderful job on the bench and yet we're not giving  
6 you all the tools -- all the tools you need.

7 I felt sure that some kind of way that  
8 this plea hearing that you would be advised by  
9 somebody that "Here is what's going to happen.  
10 Here is what you're going to see today," blah,  
11 blah, blah, and that didn't happen. They cold  
12 turkey you, and we expect you to make all these  
13 great decisions as an individual. I mean, that's  
14 too much for anybody.

15 CHAIRMAN McCONNELL: Professor.

16 JUDGE GOODE: Well, sometimes they  
17 will -- this was, although it didn't happen, would  
18 be an example. They would provide me with a little  
19 more information ahead, maybe the medical records  
20 to become familiar with before I went into the  
21 courtroom and --

22 SENATOR FORD: But that didn't happen  
23 in this case.

24 JUDGE GOODE: No, sir. For reasons  
25 unknown to me, that did not happen.

1 CHAIRMAN McCONNELL: Professor Freeman.

2 PROFESSOR FREEMAN: Just quickly, Your  
3 Honor, motions to reconsider, just help me  
4 understand this -- and specifically motions to  
5 reconsider criminal sentencing. As I understand  
6 it, there -- you can only call to mind one written  
7 motion to reconsider sentencing ruling by Your  
8 Honor, and that is this one?

9 JUDGE GOODE: Professor Freeman, on  
10 this date at this time, that is correct. There  
11 have been -- there have been questions, but I've  
12 sentenced several thousands of folks.

13 PROFESSOR FREEMAN: I understand that.  
14 I'm just trying to understand.

15 And then there's another way you can  
16 have a motion -- reconsideration, and that is sua  
17 sponte. Your Honor can do that.

18 JUDGE GOODE: Yes.

19 PROFESSOR FREEMAN: How many times have  
20 you done that?

21 JUDGE GOODE: Probably a dozen times.

22 PROFESSOR FREEMAN: Including this case  
23 we'll be talking about in a little bit?

24 JUDGE GOODE: Yes, sir.

25 PROFESSOR FREEMAN: But there are other

1 cases. And then the third way is for, I guess, the  
2 parties to just approach Your Honor and want --  
3 want to talk to you together in chambers or  
4 something like that about -- and how often would  
5 you say that's happened?

6 JUDGE GOODE: I'd say many times. In  
7 excess of 25.

8 PROFESSOR FREEMAN: Thank you.

9 SENATOR KNOTTS: Mr. Chairman.

10 CHAIRMAN McCONNELL: Any other  
11 questions?

12 The senator from Lexington.

13 SENATOR KNOTTS: Thank you, Judge. In  
14 the sentencing phase -- it was the last thing you  
15 did in this case, and you passed a sentence of ten  
16 years suspended on five years probation and  
17 counseling -- any counseling that they saw fit  
18 through the probation office, the Department of  
19 Corrections or whatever. I think you said the  
20 Department of Corrections, but I think you meant --  
21 it might be a typographical error -- the probation  
22 department --

23 JUDGE GOODE: Yes.

24 SENATOR KNOTTS: -- that they seemed --  
25 that they deemed necessary. And at that point in

1 time after the sentencing, you advised the  
2 defendant to go to counseling and -- and the  
3 defendant said, "Yes, sir," and then the Court  
4 said, "Thank you," as -- as you always do -- or  
5 judges always do. Mr. Finney said, "Thank you,  
6 Your Honor." At that point Ms. Fent, "There is  
7 also a finding, Your Honor, that she be put on the  
8 Child Abuse and Neglect Registry, the DSS  
9 registry," and you said yes. So that was at the  
10 request of Ms. Fent.

11 JUDGE GOODE: Yes, sir.

12 SENATOR KNOTTS: Did she at that time  
13 indicate to you that she was dissatisfied with the  
14 sentence that you had passed?

15 JUDGE GOODE: No, sir.

16 SENATOR KNOTTS: Okay. The only thing  
17 she wanted to do in addition to the sentence that  
18 you had passed was to place the defendant on the  
19 DSS registry for child abuse and neglect?

20 JUDGE GOODE: Yes, sir.

21 SENATOR KNOTTS: You had no problem  
22 doing that?

23 JUDGE GOODE: No, sir.

24 SENATOR KNOTTS: Did she at any time  
25 that day indicate that she was asking for a

1 reconsideration, as do in many cases when a  
2 prosecutor or a defense lawyer is dissatisfied with  
3 the sentence of the Court that they will make on  
4 the record then "I intend to offer a motion for  
5 reconsideration, Judge"? Is that not true?

6 JUDGE GOODE: That -- she did not so  
7 indicate.

8 SENATOR KNOTTS: She did not. And two  
9 days later she came up and asked for a  
10 reconsideration?

11 JUDGE GOODE: Yes, sir.

12 SENATOR KNOTTS: Thank you.

13 JUDGE GOODE: Thank you.

14 CHAIRMAN McCONNELL: I think staff  
15 counsel had some further questions.

16 MS. SHULER: I do. I would like to  
17 have this exhibit marked as an exhibit and then  
18 hand it back to Judge Goode. I would like to offer  
19 a letter from the Richland County Clerk of Court  
20 dated February 19th, 2009, and basically it says,  
21 "To Whom It May Concern. This office has made a  
22 diligent search of all records in our custody and  
23 control regarding the above-captioned matter,"  
24 which is the State of South Carolina versus Talisha  
25 Lavette Smith. "This office is not in possession

1 of any documents reflecting that the Motion to  
2 Reconsider," which is attached and which we've  
3 already offered as an exhibit, "which was filed on  
4 December 10th, 2008, has been heard and/or ruled  
5 upon. Sincerely, James D. Truitt, Clerk of Court  
6 Administrator."

7 I'd like to have that offered as an  
8 exhibit.

9 CHAIRMAN McCONNELL: Is there  
10 objection? Being none, so ordered.

11 (EXH. 8, February 19, 2009, Letter From  
12 Richland County Clerk of Court, marked for  
13 identification.)

14 MS. SHULER: Judge Goode, you've  
15 testified that you ruled on December 10th on the  
16 motion to reconsider. Do you commit your ruling to  
17 any form of order or notify in any fashion the  
18 Richland County Clerk of Court?

19 JUDGE GOODE: No, ma'am. It was  
20 presented to me by the assistant solicitor. She  
21 approached, indicated what she had, and asked if I  
22 would rehear it. I indicated that I would in some  
23 affirmative manner. And as I indicated, my  
24 recollection was I had -- that it was an order and  
25 I had signed it, but in reflection I'm not certain

1 about that.

2 But I am certain -- and I'm under  
3 oath -- in today's hearing and my position that it  
4 was presented to me. I was asked if I would rehear  
5 it, and I indicated that I would. And Ms. Stent --  
6 Fent left with the order which was not at all  
7 unusual for them to have taken it and filed it with  
8 the clerk, and when I was there, they were  
9 notifying me of -- of a hearing -- or typically  
10 when it's one that I feel would take some time, I  
11 put them on notice that I have something that's  
12 going to take more time than a plea so that it  
13 won't mess their schedule up.

14 MS. SHULER: I guess so that I'm clear,  
15 Judge Goode, what you thought was this motion to  
16 reconsider sentence, you thought you had signed  
17 this order and then gave it back to her to file?

18 JUDGE GOODE: I was signing at the time  
19 that she handed it up. It may have been probation  
20 orders. It may have been some other orders. Like  
21 I say, there was a break in the action, so to  
22 speak, and she came up. And I -- I remember one  
23 hand put it down, told me what it was and would I  
24 do it, and I said I would.

25 And I was signing, but apparently after



1 looking at Mr. Finney's copy, it was not the motion  
2 to reconsider, which would normally not have my  
3 signature. But no -- no ifs, ands or maybe sos, as  
4 we say in my way, that it was definitely presented  
5 to me, and -- and I informed her that I would  
6 reconsider the sentence. And I'm prepared to do  
7 that.

8 MS. SHULER: Thank you, Judge Goode.

9 CHAIRMAN McCONNELL: Anything further?

10 Mr. Sellers.

11 MR. SELLERS: Judge, it may -- excuse  
12 me. Maybe it's just me, but I am totally confused.  
13 We got two -- two different documents. One is a  
14 motion to reconsider, which I understand you to say  
15 that the solicitor presented to you on the bench.  
16 And we got a copy of it that's been marked as an  
17 exhibit, and it is a motion that's marked -- been  
18 filed with the clerk. Now, did you sign an  
19 order -- as opposed to a motion, did you sign an  
20 order granting this motion?

21 JUDGE GOODE: I can't say with absolute  
22 and complete confidence whether I signed it or I  
23 didn't sign it. I can say without hesitation -- or  
24 equivocation that she was informed that day that I  
25 would reconsider the sentence.

1                   MR. SELLERS: But -- but in order for  
2 everybody who is involved to be aware of your  
3 decision, there has to be another step, doesn't  
4 there, Judge? There has to be an order signed and  
5 filed either by you or you need to direct someone  
6 to prepare an order for you to sign; isn't that  
7 fair?

8                   JUDGE GOODE: The prevailing party  
9 typically, Mr. Sellers, prepares the order and --

10                  MR. SELLERS: And in this case no order  
11 was prepared or signed?

12                  JUDGE GOODE: I can't say that. I -- I  
13 don't have an independent -- an independent  
14 recollection of that.

15                  MR. SELLERS: You don't have it. The  
16 clerk doesn't have it. Ms. Fent doesn't have it.  
17 Your clerk doesn't have it, and we don't have it,  
18 right?

19                  JUDGE GOODE: And I would virtually  
20 never have it because they go back -- typically if  
21 I were given an order to sign by the solicitor of  
22 any nature, they would then file it with the clerk.  
23 I would --

24                  MR. SELLERS: And you've got a  
25 defendant who you have sentenced to probation who

1 has gone off thinking that she's not going to be  
2 going to jail, and you made a decision to  
3 reconsider that and may ultimately send her to  
4 jail, correct?

5 JUDGE GOODE: Yes, sir.

6 MR. SELLERS: And there was no effort  
7 made to notify her attorney or her that you may be  
8 resentencing her and may be incarcerating her; is  
9 that correct?

10 JUDGE GOODE: I don't know what steps  
11 were taken in that direction. However, I do know  
12 that I agreed that I would rehear the case -- I  
13 would resentence in the case, not rehear it. I  
14 would resentence, and I've got to determine what  
15 extraordinary circumstances need to be in place  
16 before -- at the resentencing that I can receive  
17 evidence, and -- and in this case that would be the  
18 medical records. And if I find that there are  
19 sufficient -- appropriate reasons, then I'll allow  
20 the medical records in.

21 And I'd like -- and this -- I'm kind of  
22 turning toward Senator Ford because he -- he asked  
23 this question. I'd likely take it under -- with  
24 this amount of a cure, I'd take it under advisement  
25 so I could have a quiet night and -- and study them

1 as they should be studied.

2 MR. SELLERS: Judge Goode, while we're  
3 on that, let me be sure I understand. And I'm a  
4 civil trial lawyer, so I haven't done a lot of  
5 criminal work, haven't done any in a long time.  
6 But as I understood, this is a guilty plea, and  
7 everything that everybody in that courtroom said  
8 the defendant admitted as true; isn't that correct?

9 JUDGE GOODE: Yes, sir.

10 MR. SELLERS: And there was no question  
11 that the solicitor -- solicitor informed you that  
12 the defendant had given two different stories, one  
13 of which was true and one was false? You knew  
14 that?

15 JUDGE GOODE: Yes.

16 MR. SELLERS: And there was a summary  
17 of the medical condition presented to you by the  
18 solicitor and by the parent, and everything that  
19 they said was admitted as true; isn't that true?

20 JUDGE GOODE: Yes, sir.

21 MR. SELLERS: And so if you saw the  
22 medical records, all you'd be doing is  
23 corroborating what they had told you that -- that  
24 the defendant admit -- admitted as being true,  
25 correct?

1 JUDGE GOODE: That's correct.

2 MR. SELLERS: That's all I've got.

3 CHAIRMAN McCONNELL: Representative  
4 Clemmons.

5 REPRESENTATIVE CLEMMONS: Thank you.

6 Your Honor, I thought I was clear and  
7 now I'm confused on another area. You just told  
8 Mr. Sellers that -- that not only had you decided  
9 when you saw Ms. Fant -- Ms. Fent, excuse me, when  
10 she presented her motion to rehear the matter, but  
11 you decided at that time that you were going to  
12 resentence in the matter. Did -- was that  
13 correctly spoken?

14 JUDGE GOODE: Well, maybe I did not  
15 speak correctly, which is entirely possible. I  
16 told her and anyone involved with this that I would  
17 reconsider the sentence.

18 REPRESENTATIVE CLEMMONS: That you  
19 would reconsider the sentence?

20 JUDGE GOODE: That's correct.

21 REPRESENTATIVE CLEMMONS: Does that  
22 mean the same thing as "I am going to resentence,"  
23 as you just testified a moment ago?

24 JUDGE GOODE: Well, a resentence can be  
25 the same sentence, but it's after additional

1 review.

2 REPRESENTATIVE CLEMMONS: I mean --  
3 and, I'm sorry, I'm not a criminal lawyer either,  
4 haven't done that kind of work in a long time.

5 JUDGE GOODE: I'm saying that I will  
6 review the case and my sentence. I will listen to  
7 argument from counsel for both sides. If I find it  
8 appropriate, I will receive evidence as to the  
9 sentence from both sides, and then I will -- I will  
10 resentence, and that sentence can be anywhere from  
11 20 years to -- actually to zero.

12 REPRESENTATIVE CLEMMONS: Okay, Judge.  
13 But you -- you made a distinction to Mr. Sellers  
14 just a moment ago that not only had you agreed to  
15 rehear the matter -- to grant the motion to rehear  
16 the matter, but you said, "Not only did I agree to  
17 do that, I agreed to resentence the defendant."

18 You made a distinction there, and I'm  
19 trying to understand what the distinction is,  
20 because my -- my understanding is -- my due process  
21 understanding is that it would be inappropriate to  
22 agree ex parte with the solicitor to resentence  
23 the -- the defendant without affording the  
24 defendant an opportunity to be involved in that  
25 hearing. Is -- is that not correct?

1 JUDGE GOODE: Oh, that's absolutely  
2 correct, and if that's what you heard me say -- and  
3 I'm not saying that it was not -- that was not what  
4 I meant.

5 REPRESENTATIVE CLEMMONS: Okay. What  
6 exactly did you mean then, Judge?

7 JUDGE GOODE: Yes.

8 REPRESENTATIVE CLEMMONS: I want the  
9 record to be clear for us.

10 JUDGE GOODE: The record is clear in  
11 that I have agreed to resentence in this case.

12 REPRESENTATIVE CLEMMONS: Okay. I --  
13 I'm still confused, but thank you very much, Judge.

14 CHAIRMAN McCONNELL: Yes, the senator  
15 from Lexington.

16 SENATOR KNOTTS: Judge, is it out of  
17 the ordinary for a solicitor whenever they bring  
18 you an order like this that -- whenever you agree  
19 to the request for a reconsideration of the  
20 sentence who prepares the order -- the actual  
21 order?

22 JUDGE GOODE: I'm sorry?

23 SENATOR KNOTTS: Who -- who is -- who  
24 is the person that -- in the court process that we  
25 have, an attorney brings you a motion and you

1 tell -- is it not -- is it out of the ordinary for  
2 you to say, "Yes, I will -- I will reconsider, and  
3 prepare me an order," or is it understood that the  
4 order will be prepared and brought back to you to  
5 be signed? Is that out of the ordinary?

6 JUDGE GOODE: It's -- according to the  
7 rules, it would be extraordinary, but according to  
8 practice in the state, especially the larger  
9 counties, it's not unusual for that not to be the  
10 case, speaking of the orders in general of -- of  
11 a -- of a housekeeping nature.

12 SENATOR KNOTTS: And at that point in  
13 time after the order is prepared and you sign it,  
14 when is it served on the defense lawyer, or is it  
15 served on the defense lawyer prior to you getting  
16 the motion?

17 JUDGE GOODE: In this case, I don't  
18 recall, but it -- typically there would be a  
19 discussion and I would state whether I would or I  
20 wouldn't, and then the prevailing party would  
21 present me with a motion and an order. And  
22 Mr. Finney was mailed a copy of the order, so --

23 SENATOR KNOTTS: You mean a copy of the  
24 motion?

25 JUDGE GOODE: Or of the motion, excuse



1 me. Thank you. And so this -- and as I indicated,  
2 my recollection of that is -- is 100 percent firm.

3 SENATOR KNOTTS: And even in civil  
4 cases or family court cases, once a judge rules,  
5 they ask the two -- two attorneys to get together  
6 and draw up an order that they both consent to and  
7 they -- they bring it back to you to be signed --  
8 to be reviewed and be signed. Is that the  
9 procedure in this state?

10 JUDGE GOODE: That is often the  
11 procedure.

12 SENATOR KNOTTS: So judges do not  
13 actually write the orders that they sign. They --  
14 they have them prepared by the two attorneys or  
15 agreed upon by the two attorneys, and then they  
16 bring them in for you to sign. I believe that's  
17 the practice in this state.

18 JUDGE GOODE: That -- that is one of  
19 the practices.

20 SENATOR KNOTTS: And been the practice  
21 for how many years?

22 JUDGE GOODE: As long as I've been  
23 practicing, but there are some cases that the two  
24 sides is not always a hundred percent winner over  
25 here and a hundred percent winner over here or a

1     loser over here, but there's a -- a middle ground,  
2     and in those situations I draft my own orders.

3                 SENATOR KNOTTS:   You make the  
4     correction and draft your own orders if they can't  
5     agree to everything in the order, right?

6                 JUDGE GOODE:   That's right.   And  
7     sometimes you get both sides to draw an order and  
8     you choose the one that most closely --

9                 SENATOR KNOTTS:   One last question.   In  
10    this particular motion that was presented to you by  
11    Ms. Fent, would it have been out of -- would it  
12    have been out of the ordinary for a line to be put  
13    on there "Be it so ordered" and signed by the judge  
14    at the bottom?

15                JUDGE GOODE:   Yes, sir.   That -- that  
16    would have been unusual.

17                SENATOR KNOTTS:   It would?

18                JUDGE GOODE:   Unless it had been  
19    consented to by Mr. Finney.

20                SENATOR KNOTTS:   If both of them had  
21    consented to it, it would be at the bottom.   They'd  
22    both have their signature on it, and it would say  
23    "Be it so ordered" and then you would have your  
24    name on it also?

25                JUDGE GOODE:   Yes, sir.

1                   SENATOR KNOTTS: But since it hadn't  
2   been served on Mr. Finney, that couldn't have  
3   happened, could it?

4                   JUDGE GOODE: No, sir.

5                   SENATOR KNOTTS: Because you would have  
6   had to schedule a hearing to be heard by both of  
7   them.

8                   JUDGE GOODE: That's correct.

9                   SENATOR KNOTTS: And you were granting  
10   a motion from the solicitor's office for a  
11   rehearing, verbally.

12                  JUDGE GOODE: That's correct.

13                  SENATOR KNOTTS: Thank you.

14                  SENATOR FORD: Let me --

15                  CHAIRMAN McCONNELL: The senator from  
16   Charleston.

17                  SENATOR FORD: Judge, just one quick  
18   question. I wanted to be clear on this. If you  
19   reopen a case -- a sentence, right?

20                  JUDGE GOODE: I did not reopen the  
21   case.

22                  SENATOR FORD: But that's not what  
23   I'm -- once you reopen a case -- a sentence, is it  
24   my understanding that once you reopen a sentence  
25   case, no matter what sentence you give -- whether

1     it's the same sentence or something harsher or a  
2     whole different sentence, but once you reopen it,  
3     that's a sentence?

4                 JUDGE GOODE:   That -- that's correct.  
5     If I --

6                 SENATOR FORD:   Resentence.   And you --  
7     you're under -- they was questioning you about  
8     resentencing.   Once you open it, that's a  
9     resentencing, right?

10                JUDGE GOODE:   After we have a hearing  
11     and I issue an order as a result of rehearing it --

12                SENATOR FORD:   Even if it -- even if  
13     it's the same sentence, that's a resentence?

14                JUDGE GOODE:   Yes, sir.

15                SENATOR FORD:   Okay.

16                JUDGE GOODE:   After hearing testimony  
17     on the motion.

18                CHAIRMAN McCONNELL:   Mr. Sellers.

19                MR. SELLERS:   Judge, this was a motion  
20     filed by the solicitor to -- asking you to  
21     reconsider your sentencing decision, correctly --  
22     correct?

23                JUDGE GOODE:   That's correct.

24                MR. SELLERS:   And Mr. Finney didn't  
25     have an opportunity to oppose the motion?

1 JUDGE GOODE: This was a -- I don't  
2 have a recollection of whether or not there was a  
3 representation of a discussion with Mr. Finney.

4 MR. SELLERS: It would be unusual for  
5 Mr. Finney under the circumstances to agree to a  
6 resentencing or a rehearing on the sentence,  
7 wouldn't it?

8 JUDGE GOODE: I -- I don't think so,  
9 because chances are so good -- and we may have  
10 rehashed this ground in chambers, and I -- I don't  
11 remember. And I'm sorry to be so vague, but I  
12 don't typically sign what's called an ex parte  
13 order, as you know, and I feel that I had some  
14 input from Jerry Finney prior to my verbal order  
15 that I would review the sentence.

16 MR. SELLERS: So you think prior to the  
17 solicitor walking in your courtroom and handing you  
18 this motion that you indicated to us that you  
19 granted on the spot, you had some conversation with  
20 Mr. Finney where he agreed that he -- he was going  
21 to let you resentence or rehear the sentencing on  
22 his client?

23 JUDGE GOODE: That or a representation  
24 from someone or -- including the solicitor.  
25 They -- they work closely together there. I've

1 never had one to misrepresent anything to the  
2 Court, and it would not be unusual -- and I'm  
3 certainly not saying this was the case -- for her  
4 to say what it is and "I've already spoken to  
5 Mr. Finney, and he's in agreement."

6 But I just -- I don't have a  
7 recollection of all of the minutia of those -- the  
8 surroundings of the issuance of the order to rehear  
9 it.

10 CHAIRMAN McCONNELL: Yes, sir.  
11 Professor Freeman.

12 PROFESSOR FREEMAN: Judge, can you  
13 testify as a fact that Jerry Finney had any idea  
14 that the solicitor was seeking reconsideration when  
15 she walked and put that motion in front of you?

16 JUDGE GOODE: No, sir.

17 CHAIRMAN McCONNELL: Any -- any other  
18 questions?

19 This concludes this -- all right.

20 Staff counsel -- you can have a seat,  
21 Judge. She's going to call back two witnesses for  
22 some clarification on something.

23 Which one would you like to call back  
24 first?

25 MS. SHULER: Margaret Fent, please.

1 CHAIRMAN McCONNELL: Ms. Fent, are you  
2 still here?

3 UNIDENTIFIED SPEAKER: She left.

4 MS. SHULER: Mr. Finney.

5 CHAIRMAN McCONNELL: Mr. Finney, are  
6 you still here?

7 MR. FINNEY: I am.

8 CHAIRMAN McCONNELL: Back behind the  
9 column there.

10 MR. FINNEY: I am.

11 CHAIRMAN McCONNELL: If you'd come  
12 forward, please, sir.

13 All right, sir. If you'd please answer  
14 any questions. You're still under oath, sir.

15 MS. SHULER: Mr. Finney, turning to the  
16 motion for reconsideration, did the solicitor  
17 contact you prior to filing the motion to inform  
18 you that she was going to ask Judge Goode to  
19 reconsider the sentence?

20 MR. FINNEY: She did not contact me to  
21 verbally inform me that she was going to ask Judge  
22 Goode to reconsider the sentence, but on the day  
23 that that document is now into evidence --

24 MS. SHULER: Right.

25 MR. FINNEY: -- I believe that's

1 December the 10th --

2 MS. SHULER: Yes, sir.

3 MR. FINNEY: -- she communicated to me  
4 in writing by faxing it to my office. In fact, if  
5 you look at that document on the top, it's the fax  
6 number -- it's either -- it's either my fax number  
7 or the solicitor's office fax number. I've got it.  
8 You've got it. It is one of the two, but it was  
9 faxed to me on that day, so that's how it was  
10 communicated to me.

11 MS. SHULER: So she faxed you the  
12 motion for reconsideration prior to visiting Judge  
13 Goode to ask for it?

14 MR. FINNEY: I don't know. You'd have  
15 to ask Ms. Fent that. It's not my motion. It's  
16 hers.

17 MS. SHULER: Right. At any time did  
18 the Court try to contact you while Ms. Fent was in  
19 his presence with the motion for reconsideration to  
20 maybe get you on the phone for your input on it?

21 MR. FINNEY: No. All I can say is that  
22 I did receive the motion. I knew that she was  
23 going to ask the judge for it, and certainly if --  
24 as an experienced trial lawyer I know that, not  
25 only Judge Goode, but any judge might handle that



1 in a number of ways. He might want to have a  
2 chambers conference. He might want to discuss it  
3 on the phone. He might want to do it out in open  
4 court on the record.

5 Ms. Fent did not call me to indicate  
6 anything that Judge Goode may or may not have said,  
7 but I do know as an experienced lawyer a judge can  
8 handle that in many ways. And certainly if he has  
9 indicated that he verbally agreed to at least hear  
10 the matter, then last Thursday I was contacted, as  
11 I testified earlier, with respect to the  
12 scheduling, and I can also testify that in the time  
13 from December the 10th to -- what date was last  
14 Thursday?

15 MS. SHULER: The 12th.

16 MR. FINNEY: The 12th of February.  
17 That's a pretty short window of time with regard to  
18 scheduling any motion in any case, particularly in  
19 Columbia.

20 MS. SHULER: So you received the motion  
21 for reconsideration. Did you ever receive an order  
22 or were -- or were you informed that the judge had  
23 granted that motion for rehearing on December 10th?

24 MR. FINNEY: I was -- I was informed --  
25 the way I read the motion, I read the motion to ask

1 for a reconsideration of sentencing. That's how I  
2 read the motion. When I was informed that the  
3 motion hearing was scheduled, it was my  
4 understanding that the motion that the state was  
5 making was indeed granted and that we were going  
6 back to court to discuss resentencing.

7 She filed a motion to ask for the Court  
8 to consider sentencing. I was in receipt of that  
9 motion, and then it got scheduled. So I was  
10 preparing to reply to the state's motion for  
11 reconsideration of sentencing from Thursday  
12 until -- I guess we were informed it was cancelled  
13 on -- the hearing was scheduled for Tuesday, so I  
14 guess I was informed on Monday that it was  
15 cancelled. So between Thursday and Monday I was  
16 preparing to reply to the state's motion.

17 MS. SHULER: Thank you, Mr. Finney.

18 CHAIRMAN McCONNELL: All right.  
19 Representative Clemmons.

20 REPRESENTATIVE CLEMMONS: Thank you,  
21 Mr. Chairman.

22 Mr. Finney, are you surprised to hear  
23 the judge say that he had agreed two days after the  
24 trial to resentence your client?

25 MR. FINNEY: Well, you know, again, I'm

1 not here as Ms. Fent -- one thing I will agree with  
2 her on is that the rules of ethics prescribe that I  
3 ethically cannot comment on the case. The case  
4 that's still pending right now at this very moment  
5 is a motion for reconsideration of the sentence.

6 I still represent the defendant, and  
7 that motion is still pending. So any comment that  
8 the judge makes either here or in court, there's an  
9 appropriate process to deal with that with respect  
10 to however he may rule or whatever he may say.  
11 But, you know, as of right now I think it would be  
12 inappropriate for me as a lawyer involved in the  
13 case to give commentary with respect to the pending  
14 motion, specifically that motion for  
15 reconsideration.

16 REPRESENTATIVE CLEMMONS: Is that --

17 MR. FINNEY: That's the only motion  
18 that's pending.

19 REPRESENTATIVE CLEMMONS: Even though  
20 the judge says he has already ruled that he will  
21 resentence in this matter?

22 MR. FINNEY: (Gestures.)

23 REPRESENTATIVE CLEMMONS: Okay. Thank  
24 you.

25 And so that I'm absolutely clear then,

1 with regard to that motion, you have not been heard  
2 by the judge on the matter of that motion at any  
3 point in time even prior to the motion having been  
4 filed; is that correct?

5 MR. FINNEY: With -- with the exception  
6 of scheduling the hearing.

7 REPRESENTATIVE CLEMMONS: Correct.

8 MR. FINNEY: It was scheduled for  
9 Tuesday.

10 REPRESENTATIVE CLEMMONS: Other than  
11 that --

12 MR. FINNEY: Other than that.

13 REPRESENTATIVE CLEMMONS: -- you have  
14 not been heard on this matter in any way?

15 MR. FINNEY: No, sir.

16 REPRESENTATIVE CLEMMONS: Thank you  
17 very much.

18 CHAIRMAN McCONNELL: We've got  
19 Mr. Harrell, then --

20 MR. HARRELL: Yes, sir.

21 CHAIRMAN McCONNELL: -- then the  
22 senator from Lexington.

23 Representative Harrell.

24 MR. HARRELL: Thank you, Mr. Chairman.

25 Mr. Finney, I'm unclear. Are -- are

1     you under the impression -- or were you under the  
2     impression that the hearing that was going to take  
3     place on Tuesday was to decide whether or not --  
4     was to decide whether or not to grant the  
5     solicitor's motion for reconsideration; is that  
6     right?

7                     MR. FINNEY:  When I was notified of the  
8     hearing that was scheduled for Tuesday by Judge  
9     Goode's law clerk, there were a number of things  
10    that I began to do as the defendant's lawyer to  
11    protect her rights with respect to that upcoming  
12    motion hearing.  There are a number of issues that  
13    I researched and prepared from Thursday until  
14    Monday to protect her rights -- constitutional  
15    rights, her -- all of the issues that we were  
16    prepared to put on the record on Tuesday.

17                    I can't get into my -- my strategy.  I  
18    can't get into the research and the issues that I  
19    was prepared to put on the record on Tuesday  
20    because on Monday I was informed that the hearing  
21    was cancelled until further notice of the Court.

22                    MR. HARRELL:  Right.

23                    MR. FINNEY:  So I cannot -- I think  
24    it's improper for me to get into my preparation and  
25    strategy with respect to that -- what we were

1 prepared to do at that hearing. When and if that  
2 date comes, I will be prepared to show up at the  
3 courthouse and put all of that on the record.

4 MR. HARRELL: Right. And, Mr. Finney,  
5 I -- I'm -- I'm not asking what you were going to  
6 put on at the hearing. What I'm confused about is  
7 whether or not you were under the impression that  
8 the hearing was on the motion as to whether or not  
9 to reconsider the sentencing or whether or not it  
10 was a hearing on resentencing.

11 MR. FINNEY: And that may have been --  
12 and I stress the word may, because the matter is  
13 still pending -- may have been one of the issues  
14 that we would have raised.

15 MR. HARRELL: I see. Okay. So you  
16 weren't a hundred percent clear on which way the  
17 hearing was going to go?

18 MR. FINNEY: I was notified that there  
19 was going to be a hearing on the motion that I was  
20 in receipt of.

21 MR. HARRELL: Okay. Okay.

22 MR. FINNEY: And we had developed a  
23 strategy to put on the record several items that  
24 we -- I say we -- that me and my office had  
25 researched over the weekend --

1 MR. HARRELL: Right.

2 MR. FINNEY: -- to get prepared for  
3 that -- that hearing on Thursday.

4 MR. HARRELL: And -- and if you had had  
5 the knowledge that Ms. Fent says -- or the judge  
6 says that he communicated to Ms. Fent that he had  
7 granted the motion for reconsideration, then you  
8 might have been under a different impression as to  
9 what Tuesday's hearing was about?

10 MR. FINNEY: I can't -- I really can't  
11 say that definitively. All I can say is that I was  
12 notified of the hearing. I -- I read the motion,  
13 and as I read the motion, it's a motion for  
14 resentencing. And my understanding was that by  
15 scheduling the hearing and not being in receipt of  
16 a written order that that meant to me he had  
17 granted at least a -- the motion to rehear it.  
18 Does that make sense?

19 MR. HARRELL: Yeah. Okay. Thank you,  
20 Mr. Finney.

21 CHAIRMAN McCONNELL: The senator from  
22 Lexington.

23 SENATOR KNOTTS: Mr. Finney, not  
24 particularly this, but let's do a hypothetical  
25 situation.

1                   MR. FINNEY: I feel like I'm in law  
2 school again.

3                   SENATOR KNOTTS: Well, I wish -- I'm  
4 glad you're not because I think you're a very well  
5 experienced attorney.

6                   And -- but the truth of the matter is  
7 the motion to reconsider the sentence of the Court  
8 means that a lawyer is prepared -- goes back and  
9 prepares whenever you get a motion like that to do  
10 one of three things. As a defense attorney, you're  
11 going to defend the reason why the sentence should  
12 not be increased and defend the reason it should  
13 stay the same or possibly go lower.

14                   So it's one of three things that can  
15 happen to a sentence. It can either go up or it  
16 can stay the same or it can be lowered, and that's  
17 what a defense attorney does in order to protect  
18 the client; is that right?

19                   MR. FINNEY: I would not disagree with  
20 that.

21                   SENATOR KNOTTS: And it could have been  
22 either one of the three, right?

23                   MR. FINNEY: I would not disagree with  
24 that.

25                   SENATOR KNOTTS: So that is a



1       resentencing; is that not right?

2                   MR. FINNEY:   I --

3                   SENATOR KNOTTS:  Either way you do it,  
4       either stay the same -- you're agreeing -- the  
5       judge is agreeing to leave it like it is -- lower,  
6       or increase it.  So it's a resentencing either way  
7       you go?

8                   MR. FINNEY:  Yes, sir.

9                   SENATOR KNOTTS:  And it happens all the  
10      time, don't it?

11                  MR. FINNEY:  Yes, sir, I certainly see  
12      the logic in that.

13                  SENATOR KNOTTS:  Yes, sir.  Thank you.

14                  CHAIRMAN McCONNELL:  Are there any  
15      other questions?

16                  We are reaching a technical point.  
17      We're going to have to take a break.

18                  SENATOR FORD:  Break or go home?

19                  CHAIRMAN McCONNELL:  We need to take a  
20      break and allow some technical adjustments.

21                  With that, we'll stand in recess until  
22      called.

23                  (A recess transpired.)

24                  CHAIRMAN McCONNELL:  All right.  We'll  
25      go back on the record at this time.

1 Ms. Shuler, where are we headed next?

2 MS. SHULER: Senator McConnell, we are  
3 heading to the Gavin -- Zail Gavin matter. And  
4 we'll go back to the Smith matter because Ms. Fent  
5 does plan on returning, but it may take her  
6 approximately 45 minutes to return.

7 Judge Goode, do you mind returning to  
8 the podium just briefly.

9 JUDGE GOODE: Yes, ma'am.

10 MS. SHULER: I want to have --

11 JUDGE GOODE: May I please.

12 MS. SHULER: No, Ms. -- I'm sorry.  
13 Ms. Traywick is going to hand you a document. The  
14 first document she's handing you is the transcript  
15 of record in the Zail Gavin February 2nd probation  
16 revocation hearing. Does that look familiar to  
17 you?

18 JUDGE GOODE: Yes, ma'am.

19 MS. SHULER: All right. I'd like to  
20 offer that as an exhibit into the record.

21 CHAIRMAN McCONNELL: All right. Is  
22 there any objection? Being none, so ordered.

23 MS. SHULER: And --

24 (EXH. 9, Transcript of zail  
25 gavin\_1.txt, marked for identification.)

1 MS. SHULER: Judge Goode, the first  
2 hearing on February 2nd was a probation revocation  
3 matter. You had originally sentenced Mr. Gavin and  
4 retained jurisdiction over his offenses; is that  
5 correct?

6 JUDGE GOODE: Yes, ma'am. Over his  
7 probation.

8 MS. SHULER: Right. And this was a  
9 probation revocation hearing. Do you recall who  
10 made that request for a probation revocation  
11 hearing?

12 JUDGE GOODE: It was -- we have  
13 Richland County and we have Lexington, and I do not  
14 recall which one that was.

15 MS. SHULER: I think these were the  
16 Richland County offenses. I can give you back the  
17 record.

18 The next document that I would like to  
19 provide you with, Jordan, is the February 9th,  
20 2009, transcript of record and ask if you are  
21 familiar with that document.

22 JUDGE GOODE: Yes, ma'am.

23 MS. SHULER: That was -- a week later  
24 you had requested sua sponte on your own motion to  
25 reconsider the probation revocation of Mr. Gavin;

1 is that correct?

2 JUDGE GOODE: That is correct.

3 MS. SHULER: All right. I'd like to  
4 offer that, Mr. Chairman, as an exhibit.

5 CHAIRMAN McCONNELL: Is there any  
6 objection? Being none, so ordered.

7 (EXH. 10, Transcript of Record for  
8 State of South Carolina vs. Zail Gavin Dated  
9 February 9, 2009, marked for identification.)

10 MS. SHULER: Jordan, if you will, hand  
11 Judge Goode the next set of documents.

12 JUDGE GOODE: Thank you, sir.

13 MS. SHULER: I'm handing to you four  
14 sentence sheets and two reorders in the Zail Ray  
15 Gavin matter. The first is a 2005 sentence in  
16 Lexington County where he pled to Peeping Tom, and  
17 you were the sentencing judge in that matter. The  
18 second matter is the sentence sheet in Richland  
19 County for Mr. Gavin where he pled to indecent  
20 exposure, and you were the sentencing judge on  
21 November the 8th, 2007, for that matter.

22 JUDGE GOODE: Yes, ma'am.

23 MS. SHULER: The next three documents  
24 are orders that you signed, one May 21st, 2008, in  
25 the Richland County indictment for indecent

1 exposure, and the next two orders are -- one is the  
2 February 2nd, 2009, order on the probation  
3 revocation hearing, the first hearing, and then the  
4 second order is February 9th, 2009, which is when  
5 you reconsidered the probation revocation.

6 JUDGE GOODE: Yes, ma'am.

7 MS. SHULER: Are you familiar with  
8 these documents?

9 JUDGE GOODE: I am.

10 MS. SHULER: And they are your orders  
11 that you signed?

12 JUDGE GOODE: Yes, ma'am.

13 MS. SHULER: All right. I'd like to  
14 offer those as an exhibit.

15 CHAIRMAN McCONNELL: All right. Is  
16 there objection? Being none, so ordered.

17 (EXH. 11, Sentencing Sheets and Orders  
18 for State vs. Zail Ray Gavin, marked for  
19 identification.)

20 MS. SHULER: Judge Goode, are there any  
21 general comments you would like to offer to the  
22 Commission regarding your philosophy with respect  
23 to the State versus Zail Gavin case?

24 JUDGE GOODE: No, ma'am, except I feel  
25 I have more latitude in probation than I do in

1 certain other cases and, again, try to cure the  
2 problem.

3 MS. SHULER: Thank you.

4 CHAIRMAN McCONNELL: All right. Judge,  
5 she's indicating we were going to move to the  
6 complainants and then we'll come back.

7 MS. SHULER: Unless anybody has a  
8 question.

9 CHAIRMAN McCONNELL: Unless anybody has  
10 a question. I'm sorry.

11 All right, sir. You can have a seat  
12 and we'll get back to you, sir.

13 JUDGE GOODE: Thank you, sir.

14 MS. SHULER: The first complainant --  
15 and this was filed jointly, and I don't know if one  
16 wants to designate the other. Do they both want to  
17 speak or at -- one at each time? Barry Crocker and  
18 Stacy Crocker.

19 CHAIRMAN McCONNELL: Do you both wish  
20 to speak or one of you?

21 MR. CROCKER: I will.

22 CHAIRMAN McCONNELL: All right, sir.  
23 Mr. Crocker, if you'd raise your right hand. Do  
24 you swear to tell the truth, the whole truth, and  
25 nothing but the truth, so help you God?

1 MR. CROCKER: I do.

2 CHAIRMAN McCONNELL: Thank you, sir.

3 MS. SHULER: As background, you live in  
4 the neighborhood that Mr. Gavin's mother and  
5 step-father reside in in Greenwood, and you brought  
6 one of the first offenses against Mr. Gavin for  
7 Peeping Tom; is that correct?

8 MR. CROCKER: Yes, it is.

9 MS. SHULER: And you have filed an  
10 affidavit because you were concerned as a result of  
11 Judge Goode's February 2nd, 2009, order  
12 releasing -- lifting some of his probation  
13 restrictions including GPS monitoring and allowing  
14 him to return to the neighborhood where you reside  
15 to visit his parents.

16 MR. CROCKER: That's correct.

17 MS. SHULER: Okay. I would like to  
18 offer you your affidavit. Is that the affidavit  
19 you filed with the Commission?

20 MR. CROCKER: Yes, it is.

21 MS. SHULER: All right. I would like  
22 to offer that as an exhibit into the record.

23 CHAIRMAN McCONNELL: All right. Is  
24 there an objection? Being none, so ordered.

25 (EXH. 12, Witness Affidavit Form of

1 Barry Judson Crocker and Stacy Aldrich Crocker,  
2 marked for identification.)

3 MS. SHULER: Basically you allege that  
4 Judge Goode performed his duties impartially in  
5 dealing with litigants in this matter. Can you  
6 sort of give the Commission a synopsis of what your  
7 concerns are -- are with respect to his ruling at  
8 the February 2nd, 2009, probation revocation  
9 hearing with Mr. Gavin.

10 MR. CROCKER: It is my understanding  
11 that there was some probation violation charges in  
12 Greenville County against us where he came back to  
13 our neighborhood, and the charges was dropped, and  
14 probation -- probation was dropped and he was took  
15 off of GPS monitor.

16 We -- back last summer he returned to  
17 our neighborhood. My wife and I seen him out  
18 there, and we went through Greenwood County and  
19 also his probation agents in Richland County to  
20 have him -- try to keep him from coming out there  
21 around our children. I -- my daughter and son was  
22 actually the victims back I think seven, eight  
23 years ago. They really wasn't comfortable with him  
24 being back there.

25 And like when he got out on February



1 2nd, he -- I understand he -- he dropped the  
2 charges, reduced the probation down to one year,  
3 took him off GPS and actually so he could be back  
4 around children as long as he was monitored around  
5 children, and that's my biggest concern that he'd  
6 be back at his mother's and father's house and I'm  
7 in close proximity to their house. I felt my  
8 family was threatened by this, and that's one of  
9 the reasons we did the affidavits and...

10 MS. SHULER: Mr. Crocker, you -- when I  
11 look at the transcript of the record, I did not see  
12 that you testified at the hearing on February 2nd.

13 MR. CROCKER: We was not aware of a  
14 hearing on February 2nd.

15 MS. SHULER: But you did subsequently  
16 testify at the later hearing on February 9th?

17 MR. CROCKER: Yes. That's correct.

18 MS. SHULER: And so at the February 2nd  
19 hearing Mr. Gavin was released from electronic  
20 monitoring by Judge Goode; is that correct?

21 MR. CROCKER: Yes.

22 MS. SHULER: And then his probation  
23 term was reduced by one year from 2011 to 2010?

24 MR. CROCKER: Yes.

25 MS. SHULER: Anything else that you

1 would like to add?

2 MR. CROCKER: No. No, ma'am.

3 CHAIRMAN McCONNELL: All right. Are  
4 there any questions?

5 Hearing none, thank you, sir.

6 Call whoever else you have.

7 MS. SHULER: Ms. Crocker.

8 Next -- the next person is Amy Hilley.

9 CHAIRMAN McCONNELL: Ms. Hilley, if  
10 you'd come forward. If you'd be so kind as to  
11 raise your right hand. Do you swear to tell the  
12 truth, the whole truth, and nothing but the truth,  
13 so help you God?

14 MS. HILLEY: Yes, I do.

15 CHAIRMAN McCONNELL: Thank you, ma'am.  
16 Please answer any questions Ms. Shuler has for you.

17 MS. SHULER: Ms. Hilley, you're also a  
18 resident of the same neighborhood in Greenwood  
19 where the Crockers reside; is that correct?

20 MS. HILLEY: That is correct.

21 MS. SHULER: And you filed a complaint  
22 with the Commission expressing concerns about Judge  
23 Goode's ruling on the February 2nd probation  
24 revocation hearing for Mr. Gavin?

25 MS. HILLEY: Correct.

1 MS. SHULER: Would you show her her  
2 affidavit.

3 Is that the affidavit you filed with  
4 the Commission?

5 MS. HILLEY: Yes, ma'am, it is.

6 MS. SHULER: All right. I'd like to  
7 offer that as an exhibit into the record.

8 CHAIRMAN McCONNELL: Is there any  
9 objection? Hearing none, so ordered.

10 (EXH. 13, Witness Affidavit Form of Amy  
11 Elizabeth Hilley, marked for identification.)

12 MS. SHULER: Ms. Hilley, you also  
13 attached to your affidavit a copy of Mr. Gavin's  
14 listing in the South Carolina sex offender's  
15 registry; is that correct?

16 MS. HILLEY: That is correct.

17 MS. SHULER: As well as a search of the  
18 Fifth Judicial Circuit public records concerning  
19 his convictions?

20 MS. HILLEY: That is correct.

21 MS. SHULER: In addition you attached a  
22 search of the Laurens County Eighth Judicial  
23 Circuit convictions?

24 MS. HILLEY: That is correct.

25 MS. SHULER: And Greenwood County?

1 MS. HILLEY: Yes, ma'am.

2 MS. SHULER: Would you explain to the  
3 Commission what concerns you have with Judge  
4 Goode's ruling on February 2nd.

5 MS. HILLEY: When we moved out into  
6 Harbor Heights, we purchased our property in 2001,  
7 and it was after that that we had heard that  
8 Mr. Zail Ray Gavin had been sentenced as a Peeping  
9 Tom. And so I have two young children, and I had  
10 been monitoring Mr. Gavin ever since this has  
11 occurred because his parents do have a home out  
12 there and it has been my concern.

13 And you can see in my affidavit that  
14 not only did Mr. Gavin have a dealing with the  
15 Crockers, but behind his parents' home he had  
16 another victim. So there's two -- two homes right  
17 there in that area that Mr. Gavin has offended  
18 basically. So we've been watching this very  
19 closely, especially with my two young children.

20 And so any time I hear anything about  
21 Mr. Gavin coming up, I watch it closely. When I  
22 had heard that he had broken his probation  
23 violation last summer, I called our local -- Marion  
24 Stroup which is our victims -- victims assistant  
25 director here in Greenwood County with the

1     sheriff's office. When I contacted her, she didn't  
2     go into detail with me, but she had told me that  
3     there was a case in Richland County that Mr. Gavin  
4     was coming up against, and she says, "Amy, I really  
5     believe that this is going to take care of our  
6     problem in Greenwood County."

7                     And we thought that the case was going  
8     to be heard and he was going to be taken care of.  
9     Well, my understanding, it kept getting pushed off  
10    and pushed off, but I hadn't heard any more about  
11    it. But then when I got the phone call one  
12    Wednesday evening, which was right after February  
13    2nd, that Mr. Gavin had not only had his -- what --  
14    that he had gone up to court for on the 2nd, that  
15    they were dismissed and that he had not only been  
16    dismissed, but he had had his probation  
17    violation -- his probation sentence reduced by one  
18    year in addition to coming off of electronic  
19    monitoring, that really concerned me.

20                    I didn't understand how he could be  
21    taken off of electronic monitoring and have a  
22    probation sentence reduced by one year when he was  
23    violating probation. And so I actually -- I'm not  
24    one to judge. So if you'll notice in my affidavit  
25    I have a lot of questions that I presented in my

1 affidavit. I'm questioning because I'm not the one  
2 to judge. I'm coming before you to review this on  
3 our behalf.

4 But I actually tried to call Judge  
5 Goode's office and talk to him personally about  
6 what had happened, couldn't get him. He wasn't  
7 available until the following week, and I said, "Is  
8 there anybody I can talk to?" They referred me to  
9 Ms. Sirmon who is Richland County's probation and  
10 parole. I tried calling her, and that's when I  
11 started sending out e-mails inquiring about stuff.  
12 "How could this be?"

13 And before the weekend was up, I had a  
14 phone call that there was going to be a hearing in  
15 Fairfield County on Monday, so I made arrangements  
16 to be at that hearing on Monday so I could get up  
17 and also speak at that hearing because I just  
18 didn't feel that it was just what had happened.

19 MS. SHULER: So you were not at the  
20 February 2nd hearing?

21 MS. HILLEY: I was not at the February  
22 2nd hearing, but I did talk to Ms. Sirmon. She  
23 called me back on Saturday and talked to me and I  
24 asked her direct questions, "Did this occur?" I  
25 mean, I wanted to find out for myself from the

1 people that were there, and she said it had  
2 occurred, and that's why I felt it was important  
3 for me to be at that hearing on Fairfield County on  
4 Monday to show my concerns.

5 MS. SHULER: At the February 9th  
6 hearing did Judge Goode hear your testimony?

7 MS. HILLEY: He did. He did allow me  
8 to get up and speak.

9 MS. SHULER: All right. And what was  
10 his ruling, do you recall, from that February 9th  
11 hearing?

12 MS. HILLEY: From the February 9th he  
13 put the one year probation back on. He said that  
14 it was not his intent. It -- because I asked him  
15 why would he reduce it by one year, and he told me  
16 he had not reduced it by one year. However, when  
17 it went back to Ms. Sirmon, she confirmed that he  
18 had reduced it. He said that was not his intent,  
19 and he -- he put the sentencing back on for the one  
20 year. In addition, he did put Mr. Gavin back on  
21 electronic monitoring.

22 MS. SHULER: Thank you, Ms. Hilley.  
23 That's all I have.

24 CHAIRMAN McCONNELL: All right. Any  
25 member of the Commission have a question?

1 Thank you, ma'am.

2 MS. HILLEY: May I say something,  
3 please?

4 CHAIRMAN McCONNELL: Yes, sir.

5 MS. HILLEY: Thank you. I just want to  
6 thank the -- Senator McConnell. I do thank you and  
7 Ms. Shuler and the rest of the members of the  
8 judicial committee for hearing our concerns.

9 I try to instill in my children to not  
10 be afraid to get involved, and, again, I'm not here  
11 to judge. I bring my concerns to y'all. I do ask  
12 that you read the transcripts from the 2nd. I was  
13 not there, but from what I've heard there may be  
14 some question into how things were handled and how  
15 Ms. Sirmon was handled during that hearing on the  
16 2nd.

17 And just also keep in mind I appreciate  
18 that the General Assembly did enact back in January  
19 of 1998 the victims bill of rights, and I just ask  
20 that y'all keep that in mind, that the victims have  
21 rights, and were they adhered to. But thank you.

22 CHAIRMAN McCONNELL: Thank you.

23 Next is?

24 MS. SHULER: Ingrid Carol Lee.

25 CHAIRMAN McCONNELL: If you'd be so



1 kind as to raise your right hand. Do you swear to  
2 tell the truth, the whole truth, and nothing but  
3 the truth, so help you God?

4 MS. LEE: Yes, sir.

5 CHAIRMAN McCONNELL: Thank you. Please  
6 answer any questions Ms. Shuler has for you.

7 MS. SHULER: Ms. Lee, you filed an  
8 affidavit with the Commission, and I'm going to ask  
9 that Laurie bring that to you.

10 Is that your affidavit?

11 MS. LEE: Yes, ma'am, it is.

12 MS. SHULER: I'd like to offer that as  
13 an exhibit into the record.

14 CHAIRMAN McCONNELL: All right. Is  
15 there objection? Being none, so ordered.

16 (EXH. 14, Witness Affidavit Form of  
17 Ingrid Carol Lee, marked for identification.)

18 MS. SHULER: Ms. Lee, you have a  
19 daughter Kaley (sic) with Mr. Gavin; is that  
20 correct?

21 MS. LEE: Yes, ma'am.

22 MS. SHULER: And you expressed concerns  
23 because you've been following all the criminal  
24 history, so to speak, or -- or arrests of  
25 Mr. Gavin, and your concern is related to Mr. Gavin

1 being released on -- from electronic monitoring at  
2 the February 2nd hearing and allowed to visit his  
3 parents; is that correct?

4 MS. LEE: Yes, ma'am. That's my main  
5 concern.

6 MS. SHULER: All right. What other  
7 additional concerns do you have?

8 MS. LEE: Just the handling of this  
9 case since I have followed it, since '05 when he  
10 was first charged in Lexington County and the way  
11 it's been handled since then.

12 MS. SHULER: Can you briefly explain  
13 how the handling of this case has concerned -- has  
14 resulted in concerns for you.

15 MS. LEE: Yes, ma'am. Bear with me.  
16 I'm a little nervous. I'll try to be as brief as  
17 possible. There's a lot of information that I have  
18 witnessed.

19 In 2005 Mr. Gavin was charged, as you  
20 said, with Peeping Tom. Up until that point I  
21 really didn't know about his criminal history which  
22 is something I have a lot of regrets about. The  
23 day he was arrested -- or the day I found out he  
24 was arrested I stopped all visitation with Kylee,  
25 and he was charged -- it was a while before it went

1 to court.

2 And I believe I have in my affidavit  
3 the day that hearing was scheduled in Judge Goode's  
4 court -- that was in Lexington County -- I spoke  
5 with Mr. Gavin because I was quite certain he was  
6 going to prison, and he informed me that he -- his  
7 attorney had already met with Judge Goode, that his  
8 attorney had had lunch with Judge Goode, and that  
9 they had worked everything out and that he would  
10 not be going to prison. And I told him that I  
11 thought he was crazy.

12 I went to the hearing the next day, and  
13 much to my surprise that's pretty much what  
14 happened. He got 90 days in the Lexington County  
15 jail to be served at his leisure either on the  
16 weekends or when his employment permitted it and I  
17 think some probation as well. I -- I've turned in  
18 supporting documentation of all of this. I think  
19 it should be on the documentation.

20 After sentencing him, Judge Goode told  
21 Mr. Gavin very explicitly, "If I ever see you in my  
22 courtroom again, you will regret it." And I  
23 witnessed that. Since then Mr. Gavin has been in  
24 Judge Goode's courtroom I honestly don't know how  
25 many times. I know -- I know personally of four

1 times. I know there's more than that that I was  
2 not present at. He has repeatedly been let off of  
3 probation violations. In November of '07 he went  
4 before Judge Goode for three counts of indecent  
5 exposure, and I believe he had two or three  
6 probation violations at that time.

7 Keep in mind this is a man who has  
8 numerous sexual offenses in multiple states, sex  
9 with a minor in Indiana. He had an indecent  
10 exposure charge in Greenwood, South Carolina, in  
11 1996, then the charges you heard about from them,  
12 in addition to multiple felony drug charges. He  
13 has been let off time and time again.

14 He went before the judge in '07 --  
15 November of '07 in Richland County for the three  
16 counts of indecent exposure. I believe he was  
17 sentenced to three years suspended to six months.  
18 He served 85 days in jail for three counts of  
19 indecent exposure and I believe one count of  
20 Peeping Tom, this later report shows, and multiple  
21 probation violations.

22 Since being released from prison in --  
23 in February of '08 he's had seven probation  
24 violations in Richland County. I attended a  
25 probation violation hearing in Fairfield County in

1 May of 2008 where he had -- thank you very much --  
2 three probation violations. At the time Agent  
3 Vandyke of the Richland County probation and parole  
4 office was handling that. And I don't think my  
5 testimony can let you know how that probation agent  
6 was treated that day. She was chastised for  
7 bringing Mr. Gavin to court. She was told she was  
8 being too hard on Mr. Gavin and that they needed to  
9 let up on him, that they were setting him up for  
10 failure.

11 So the same outcome, nothing. Three  
12 probation violations, all dismissed. Since then  
13 he's had four more. The first time it was  
14 scheduled was in December in Richland County for  
15 the four probation violations. I was in attendance  
16 at that hearing with my attorney. We were  
17 scheduled I think for 9:00 a.m. This was actually  
18 a couple days after the Gaddie plea.

19 We sat there until about 10:30. Judge  
20 Goode finally took the bench and heard a few cases,  
21 and it -- it was very odd. He seemed very unaware  
22 of -- of what was going on and almost confused. He  
23 kept having to repeat himself to the -- it was  
24 mainly probation violations he was hearing. It was  
25 very confusing for everybody there. I mean, you

1     could kind of look around the courtroom and see  
2     that everybody was wondering what's going on here,  
3     because he seemed so out of it.

4                     He heard -- I don't remember, but two  
5     or three cases and took a recess. It was less than  
6     an hour in the courtroom. Came back in, heard a  
7     couple more cases, and then abruptly got up and  
8     said he was needed at the Supreme Court and that  
9     court was over for the day. No -- that was it. So  
10    we sat there from 9:00 until 12:00 something and  
11    then that was the outcome.

12                    It was rescheduled for February 2nd in  
13    Fairfield County. I -- I was in attendance at that  
14    hearing as well. Agent Sirmon was there for  
15    Richland County probation and parole. She got the  
16    same outcome Agent Vandyke did. She was read the  
17    riot act. Judge Goode told her that if there was  
18    any way possible he would be sanctioning her for  
19    her actions. And he went on about that for a  
20    while, and at that point said that he was going to  
21    reduce Mr. Gavin's parole by one year. He was  
22    going to release him from GPS monitoring, that he  
23    was allowed go see his parents, and that he could  
24    see his children.

25                    I would also like to point out during

1     this hearing that Agent Sirmon had an affidavit  
2     from a Dr. William Burke who is out of Summerville,  
3     South Carolina, who was, from what I understand,  
4     the head of the sex offender class or something  
5     these sex offenders have to attend. And we were  
6     told -- my attorney was told by Agent Sirmon that  
7     he had been kicked out of that class, and it's  
8     required -- it's a required class. Judge Goode  
9     refused to put the affidavit into evidence because  
10    Dr. Burke was not in attendance at the probation  
11    hearing.

12                 I was not unfortunately at the February  
13    9th hearing. I was actually at Disney with my  
14    daughter. And I didn't hear about it until that  
15    Friday or I would have been there.

16                 I would like to point out that although  
17    Judge Goode decided to go back to court on the 9th,  
18    Mr. Gavin received no repercussions. The only  
19    thing that was done on the 9th were the same things  
20    that were put back into place that he took away on  
21    the 2nd. So here is a man who's had seven  
22    probation violations since being released from  
23    prison a year ago and he's had absolutely no  
24    repercussions. Before that he had violations in  
25    Richland County and in Lexington County with no

1     repercussions.

2                     Maybe that's normal. My understanding  
3     of -- of the law, the justice system -- I'm not an  
4     attorney. But I do know a little bit that -- I  
5     don't think that's the way it's supposed to work.  
6     I really believe that in my heart. And I've been  
7     waiting three years for this. I've been trying to  
8     get somebody to listen to me for three years. So I  
9     want to thank the committee for having this  
10    hearing, and I really appreciate your time and I --  
11    I hope that all these victims that showed up today  
12    are heard because it's not about the criminals.  
13    It's really not.

14                    I don't expect the judge to have  
15    courtesy and kindness and an open heart for a sex  
16    offender or someone who slaps a six-month-old baby.  
17    And that's all I have.

18                    CHAIRMAN McCONNELL: All right. Does  
19    any member of the Commission have any questions?

20                    Thank you so much.

21                    Professor, do you have a question?

22                    Could you come back, ma'am. I'm sorry.

23                    MS. LEE: I'm sorry.

24                    CHAIRMAN McCONNELL: The professor has  
25    a question.



1                   PROFESSOR FREEMAN: Just very -- very  
2 quickly, ma'am. You mentioned that -- that  
3 Mr. Gavin was bragging about his lawyer having  
4 wire -- kind of wired things with the judge, had  
5 lunch with the judge. I would like to know  
6 everything -- when that was and if -- if you know  
7 who that lawyer was.

8                   MS. LEE: I know the firm representing  
9 him was Moore, Taylor & Thomas in West Columbia. I  
10 believe it was a Mr. Taylor. I'm not sure. And  
11 that was in -- that was right before he went to  
12 court for the 2005 Peeping Tom charge. I  
13 believe -- I'm not -- don't hold me to this. I  
14 believe that was heard in April of '06.

15                  PROFESSOR FREEMAN: This -- this is --  
16 happens to be a really serious issue.

17                  MS. LEE: Yes, sir, I know.

18                  PROFESSOR FREEMAN: So I would like you  
19 to -- to put on the record as carefully and as  
20 fully as you can what you were told -- I'm not  
21 saying it's true or not --

22                  MS. LEE: Right.

23                  PROFESSOR FREEMAN: -- but what -- what  
24 you were told that you earlier alluded to with the  
25 Commission.

1 MS. LEE: I spoke with Mr. Gavin the  
2 day before he was to go to court. He told me that  
3 his attorney was good friends with Judge Kenneth  
4 Goode, that they hunted and fished together, and  
5 that they had had lunch prior to the day I spoke  
6 with him and that they had worked out everything  
7 for the hearing the next day. I mean, that -- you  
8 know, it was three years ago. That's not a direct  
9 quote, but that is exactly the gist of the  
10 conversation I had with him.

11 PROFESSOR FREEMAN: Did he say anything  
12 about the -- anybody from the state or the  
13 probation department or any -- anybody like that  
14 being present?

15 MS. LEE: No. No, sir.

16 PROFESSOR FREEMAN: Okay.

17 CHAIRMAN McCONNELL: Any other  
18 questions?

19 The senator from Charleston.

20 SENATOR FORD: Is -- is this a  
21 telephone conversation?

22 MS. LEE: No, sir. It was  
23 face-to-face.

24 SENATOR FORD: Okay. Now, I thought he  
25 was under strict orders not to see you or your kid.

1 MS. LEE: My kid was not with me.

2 SENATOR FORD: So that order didn't  
3 affect the kid -- I mean, you?

4 MS. LEE: No, not at the time. I'm  
5 currently trying to get a restraining ordering, but  
6 at the time I did not have one, no.

7 SENATOR FORD: And where was this? A  
8 restaurant?

9 MS. LEE: Where did this conversation  
10 take place? It took place in West Columbia at his  
11 home 12 Holly Court.

12 SENATOR FORD: You went to his home?

13 MS. LEE: Yes.

14 SENATOR FORD: And what were the  
15 circumstances?

16 MS. LEE: Of me going there?

17 SENATOR FORD: Yeah.

18 MS. LEE: It probably -- he owed my  
19 back child support if I had to guess. That would  
20 be the only reason why I would be going to his  
21 house I would say.

22 SENATOR FORD: And you -- you went  
23 there yourself?

24 MS. LEE: Yes, sir.

25 SENATOR FORD: And this is a dangerous

1 man and you're going to his home?

2 MS. LEE: Well, at the time I didn't  
3 know his complete background.

4 SENATOR FORD: What year was this?

5 MS. LEE: 2006 -- 2006. He was charged  
6 in '05.

7 SENATOR FORD: But you was talking  
8 about 1996 and '7.

9 MS. LEE: I just found that out in the  
10 last year, sir. Once he -- when he was convicted  
11 in November of '07 for those indecent exposure  
12 charges, I actually looked and searched and found  
13 all his criminal records. I spoke to the  
14 courthouse in Indiana where he was charged. I went  
15 to the Greenwood County courthouse. I found out  
16 all this on my own within the last year. At the  
17 time I had no idea of all the other charges.

18 SENATOR FORD: And so -- so -- so when  
19 you went to his house in 2006, did you have anybody  
20 with you?

21 MS. LEE: I think a friend was in the  
22 car. She didn't go in with me.

23 SENATOR FORD: So no witnesses on the  
24 conversation?

25 MS. LEE: No, sir, there are no

1 witnesses.

2 CHAIRMAN McCONNELL: Any other -- the  
3 senator from Lexington.

4 SENATOR KNOTTS: You say he owed you  
5 back child support?

6 MS. LEE: Yes, sir.

7 SENATOR KNOTTS: Okay. So you're his  
8 ex -- ex-spouse?

9 MS. LEE: I had a brief relationship in  
10 2002 with him.

11 SENATOR KNOTTS: You wasn't married to  
12 him?

13 MS. LEE: No, sir.

14 CHAIRMAN McCONNELL: Are there any  
15 other questions?

16 Thank you, ma'am.

17 MS. LEE: Thank you.

18 CHAIRMAN McCONNELL: Ms. Fent is back,  
19 so what we'll do is stop, go back to her and finish  
20 up with this matter.

21 If you would come forward, please,  
22 ma'am. I remind you you're still under oath.

23 Ms. Shuler.

24 MS. SHULER: Ms. Fent, thank you for  
25 returning.

1                   You testified earlier that you  
2     submitted a motion to reconsider sentence in the  
3     Talisha Smith case to Judge Goode on December  
4     10th --

5                   MS. FENT:   Yes.

6                   MS. SHULER:  -- is that correct?

7                   Did you -- what method did you use to  
8     submit it? Did you approach him in person in the  
9     courtroom?

10                  MS. FENT:  I went into the courtroom.  
11     I wanted -- I needed to serve him with a copy of  
12     it, and I didn't want to do it back in chambers or  
13     anything, so I figured I'd go down while he was on  
14     the bench in between pleas or whatever was  
15     happening in court. I approached -- I asked to  
16     approach the bench. So that's where -- where it  
17     happened.

18                  MS. SHULER:  Was there any oral  
19     agreement at that time -- did Judge Goode order  
20     that he would grant your motion --

21                  MS. FENT:  No.

22                  MS. SHULER:  -- to reconsider sentence?

23                  MS. FENT:  No. Basically I -- I  
24     approached the bench. The judge saw that I was  
25     coming and kind of smiled at me and went actually

1 to fist bump me, for lack of a better description,  
2 and I kind of awkwardly, you know, leaned over  
3 because clearly this case has been in the news.  
4 The evening before it hit the papers.

5           And he said -- I don't know if he  
6 called me Margaret or Ms. Fent. I don't know if he  
7 knows my first name. But said, "She only slapped  
8 her," and I was very uncomfortable. I said, "Well,  
9 actually I'm here. I just needed to serve you with  
10 a copy -- I filed a motion to reconsider," and I  
11 think my hands were even like this (indicating)  
12 because I was just -- I was uncomfortable that he'd  
13 made the comment, and I said, "I just wanted to --  
14 to serve you with a copy of the motion."

15           And he said, "If I grant it, are you  
16 going to call the media?" And I -- again, I  
17 just -- you know, I said, "I just wanted to give  
18 you a copy of it, Judge," and then turned around  
19 and walked away. There was no indication that it  
20 was going to be granted or was granted or anything.

21           MS. SHULER: Before you approached  
22 Judge Goode, did you fax a copy of this motion to  
23 reconsider sentence to Jerry Finney?

24           MS. FENT: I don't know if I -- I mean,  
25 it was all done basically simultaneously. I had

1 typed it up, made copies, went down to the clerk's  
2 office, had them all file stamped, left the  
3 original one there. So I don't know if I, you  
4 know, went into the courtroom first and then went  
5 back up to my office to fax Mr. Finney a copy, but  
6 it was all done, you know, simultaneously.

7 MS. SHULER: Thank you.

8 CHAIRMAN McCONNELL: Are there any  
9 questions?

10 The senator from Charleston, Senator  
11 Ford.

12 SENATOR FORD: Yeah, Ms. Fent, you say  
13 you're not sure how the judge -- Finney -- how did  
14 you make Attorney Finney aware of the order, right?

15 MS. FENT: I said I faxed it to him.

16 SENATOR FORD: Oh, you did?

17 MS. FENT: Not the order. There's not  
18 an order. My motion --

19 SENATOR FORD: Yeah, you said you faxed  
20 it to him?

21 MS. FENT: Yes.

22 SENATOR FORD: And you had to -- you  
23 knew that right away? You had to think about  
24 whether you faxed it or not?

25 MS. FENT: No, I knew I faxed it. I'm



1 saying I don't know if I faxed it to him prior to  
2 going to give the judge a copy or after I gave the  
3 judge a copy. My office is up on the fourth floor.  
4 The clerk's office is on the second floor. I don't  
5 remember which courtroom Judge Goode was in that  
6 week, so --

7 SENATOR FORD: You have a lot of cases,  
8 right, so you can't remember all the details?

9 MS. FENT: I remember this very  
10 vividly.

11 SENATOR FORD: No, because you said you  
12 don't know when did you fax it to him, before or  
13 after Judge Goode received it.

14 MS. FENT: Yeah. It would be -- it's  
15 time stamped as to when I filed it with the clerk's  
16 office. I think it says 12:17 or 12:00 -- so  
17 sometime around noon and I'm sure --

18 SENATOR FORD: But you know you faxed  
19 it to him?

20 MS. FENT: Absolutely. Mr. Finney  
21 testified that I faxed it to him.

22 SENATOR FORD: No, I believe you faxed  
23 it to him. I'm just talking about when.

24 MS. FENT: Yeah. The exact time it  
25 would be on his fax receipt --

1                   SENATOR FORD: Because you have too  
2 many cases, right?

3                   MS. FENT: I have 200 charges. I have  
4 less defendants, but --

5                   SENATOR FORD: Judge Goode being --  
6 yeah, I know. I know. Judge -- Judge Goode being  
7 a rotating -- not rotating judge. What y'all call  
8 him?

9                   MS. SHULER: At large.

10                  SENATOR FORD: At large judge. He got  
11 how many cases?

12                  MS. FENT: I couldn't answer that  
13 question.

14                  SENATOR FORD: Probably ten times more  
15 than what you got?

16                  MS. FENT: I couldn't answer that  
17 question.

18                  SENATOR FORD: Okay, but a few  
19 minutes -- but when you was here earlier, you had  
20 no information -- you couldn't answer because you  
21 said this was a pending case, but then when you  
22 came back, I mean, you're telling us all kind of  
23 stuff that seem to me is strictly confidential  
24 since you're talking about a pending case.

25                  MS. FENT: The ethical rules allow me

1 to respond to -- when there are misstatements made  
2 by other parties. Once those statements are made,  
3 I am allowed under the ethical rules to respond to  
4 those.

5 SENATOR FORD: You were giving us more  
6 than that at a minute ago. You give us more than  
7 that a few minutes ago when she was questioning you  
8 about this incident.

9 MS. FENT: I heard both the law clerk  
10 testify and Judge Goode testify as to the facts of  
11 this discussion at the bench. I am responding to  
12 that -- to that encounter.

13 SENATOR FORD: What about the comment  
14 that you said Judge Goode told you what? When he  
15 was playing with you and you --

16 MS. FENT: First when he went -- after  
17 he fist bumped me, he said, "She only slapped her."

18 SENATOR FORD: And that's your word  
19 against his word, right?

20 MS. FENT: (Nods head.)

21 SENATOR FORD: But that's not too much  
22 information for us?

23 MS. FENT: I'm telling you the facts of  
24 my -- of my encounter with the judge.

25 SENATOR FORD: But, Attorney, you said

1     that earlier you cannot answer a question.  Now  
2     you're telling us something that is real damaging  
3     to the judge.

4                 MS. FENT:  When I initially testified,  
5     the law clerk had not testified to this  
6     encounter --

7                 SENATOR FORD:  But nobody mentioned  
8     this incident about he (sic) only slapped her.

9                 MS. FENT:  Right.  I just testified to  
10    that.

11                SENATOR FORD:  But it wasn't on the  
12    record, so why you had to bring that up if you  
13    didn't have that information before?

14                MS. FENT:  I'm responding to the  
15    testimony of the law clerk and the judge.

16                SENATOR FORD:  She's bringing new  
17    information now that she -- she couldn't bring  
18    before.

19                PROFESSOR FREEMAN:  She's allowed to  
20    respond if something is under oath.  She's under  
21    oath.

22                SENATOR FORD:  But that's not my point.  
23    That's not my point.  My point is this.  Earlier  
24    she couldn't answer no question because she said  
25    it's a pending case, and now she's telling us -- I

1 know she's under oath. That's common sense. But  
2 she's also bringing new information that is  
3 damaging.

4 PROFESSOR FREEMAN: We brought -- we  
5 brought her back.

6 SENATOR FORD: But not to bring new  
7 information.

8 PROFESSOR FREEMAN: Well --

9 SENATOR FORD: I mean, she's going to  
10 tell --

11 PROFESSOR FREEMAN: There's no other  
12 reason to bring her back.

13 SENATOR FORD: No, no, no. Professor,  
14 I disagree. The reason we brought her -- the  
15 reason we brought her back is to respond to  
16 those -- some of those charges. That's why we  
17 brought her back.

18 PROFESSOR FREEMAN: That's what she's  
19 doing.

20 SENATOR FORD: No. No, she's not. She  
21 brought additional information.

22 Well, let me ask you a question. Can  
23 you find in the record where -- where anybody said  
24 that the judge said that "I only slap --" I mean,  
25 he only -- "she only slapped her"? Is that any

1 place in the record? Isn't that new information?

2 Is that new information?

3 MS. FENT: I think the law clerk did  
4 testify that there was a discussion, and I am  
5 clarifying and responding as to what that  
6 discussion was between myself and the judge.

7 SENATOR FORD: Okay. Your discussion  
8 with the judge, the law clerk -- the law clerk  
9 heard that, that he said that?

10 MS. FENT: If he was listening to what  
11 was said, that is what was said.

12 SENATOR FORD: Where was -- where was  
13 the law clerk?

14 MS. FENT: He was sitting to the left  
15 of Judge Goode. I remember him -- he had a laptop  
16 there, and I remember him kind of turning back to  
17 his -- to his laptop, to his computer and kind of,  
18 you know --

19 SENATOR FORD: So basically --

20 MS. FENT: -- both looking at us and  
21 also, you know, typing whatever it was he was -- he  
22 was doing on the laptop.

23 SENATOR FORD: So based on all that,  
24 the law clerk is going to testify and say that he  
25 did hear the judge say that?

1 MS. FENT: I don't know what the law  
2 clerk would testify to, but this is what was said  
3 to me.

4 SENATOR FORD: It's just interesting  
5 that right now you have so much free information  
6 and before you didn't have any.

7 CHAIRMAN McCONNELL: Let me -- so we  
8 can clarify for the record, is -- your  
9 understanding of the ethics is that on a pending  
10 matter that if a comment is made, you're allowed to  
11 clarify if it's made about you or in contradiction  
12 with what you know --

13 MS. FENT: Correct.

14 CHAIRMAN McCONNELL: -- is that  
15 correct?

16 MS. FENT: Outside the -- I can speak  
17 on what's basically public -- public knowledge, you  
18 know, the date of arrest, the time of arrest.  
19 There's a list of things that are in the ethical  
20 rules that I can comment on, but I can also respond  
21 to misstatements or to clarify.

22 CHAIRMAN McCONNELL: All right. I just  
23 want to get the record clear. And -- and earlier  
24 until those comments were made, you did not feel  
25 that under the ethics you could comment?

1 MS. FENT: Correct.

2 CHAIRMAN McCONNELL: Now that those  
3 comments have been made, you feel you're simply  
4 responding to those comments even if they contain  
5 information you previously could not have given?

6 MS. FENT: Correct. If -- if when I  
7 was up here you had asked me about my  
8 communications, I would have not talked to you  
9 about them, but it was after I testified. The law  
10 clerk came up here and testified and Judge Goode  
11 indicated that he told me that I said, "Will you  
12 hear my motion?" and that he responded, "Yes, of  
13 course I will," and that conversation did not take  
14 place.

15 CHAIRMAN McCONNELL: Does anybody have  
16 any other questions?

17 The senator from Lexington.

18 SENATOR KNOTTS: How long have you been  
19 a solicitor?

20 MS. FENT: I've been a prosecutor for  
21 17 years.

22 SENATOR KNOTTS: 17 years.

23 MS. FENT: Yes.

24 SENATOR KNOTTS: All in the Fifth  
25 Circuit?



1 MS. FENT: No, sir. I started out in  
2 San Antonio, Texas, at the Bexar County district  
3 attorney's office. I worked there for  
4 approximately eight years. I then came to the  
5 National Advocacy Center where I taught prosecutors  
6 how to try cases for approximately five years, and  
7 then I took the bar exam here in South Carolina, my  
8 second bar exam. Then I've been with the Richland  
9 County solicitor's office since January of 2005.  
10 So I've been a prosecutor my whole -- my whole  
11 career.

12 SENATOR KNOTTS: Okay. Do they --  
13 where you come from in Texas do they have the same  
14 type of procedures that you see here in South  
15 Carolina as it goes to preparing orders and  
16 requesting orders and judges -- do judges make the  
17 order -- or prepare the order or does the assistant  
18 solicitor?

19 MS. FENT: Generally the judge does.  
20 The -- judges there don't have law clerks. There's  
21 a central office that basically does all the  
22 paperwork and everything and assists each of the  
23 judges, and so out of that office there's a support  
24 staff.

25 SENATOR KNOTTS: Is it the procedure

1 here that whenever you ask for a motion that the  
2 motion is granted or are orders prepared by the  
3 solicitor?

4 MS. FENT: Not all the time.

5 SENATOR KNOTTS: Not all the time, but  
6 sometimes?

7 MS. FENT: Yeah, sometimes, and  
8 sometimes the judge's law clerk will prepare the  
9 orders, and sometimes we prepare them and attach  
10 them to the motion. It's just different practices.

11 SENATOR KNOTTS: And you serve them on  
12 all parties? Once it's granted, you serve it or --  
13 well, once it's asked for, you serve it --

14 MS. FENT: Absolutely.

15 SENATOR KNOTTS: -- like you did in  
16 this case?

17 MS. FENT: Once I am told that -- I  
18 guess in this specific -- if a rehearing is going  
19 to be granted -- because a judge doesn't have to  
20 grant a rehearing. It's not an automatic thing.  
21 They could just, you know, issue an order and deny  
22 it by written order. They could issue an order and  
23 grant it. They could I guess just sit on it and  
24 not respond at all potentially to the motion.

25 SENATOR KNOTTS: Sometimes verbal --

1 grant it verbally?

2 MS. FENT: Well, in this case that's  
3 what happened is I was called and told that the  
4 judge was going to schedule it.

5 SENATOR KNOTTS: Okay. Let me ask you  
6 this. After the sentencing of -- of the defendant,  
7 you brought to the attention in -- of the Court  
8 that you wanted her -- in addition to the ten years  
9 suspended on five years probation, that you wanted  
10 her listed on the DSS child abuse list?

11 MS. FENT: Yes. And I think I also at  
12 the very beginning when the judge asked, you know,  
13 what is the charge -- or I indicated to the  
14 judge -- I basically announced the case. This is  
15 the defendant standing before you. This is the  
16 attorney. This is what they're charged with.

17 SENATOR KNOTTS: This was at the very  
18 end after the sentence of the Court, and the record  
19 shows that you said -- after everybody said, "Yes  
20 Your Honor," and they were fixing to go, you said,  
21 "Judge, you -- we want on the list for the DSS  
22 child abuse list."

23 MS. FENT: Right. What I was going to  
24 get at is that it was -- it's an automatic finding  
25 if you're convicted of this offense. It's under

1 statute, so I just wanted to make sure that that  
2 finding --

3 SENATOR KNOTTS: Right.

4 MS. FENT: -- that's basically what my  
5 statement was, "And, Your Honor," you know, to make  
6 sure that the --

7 SENATOR KNOTTS: Right.

8 MS. FENT: -- finding was put on the  
9 order.

10 SENATOR KNOTTS: You wanted it clear  
11 that she was going to be put on that list so that  
12 she couldn't take care of children anymore which is  
13 appropriate.

14 MS. FENT: Absolutely.

15 SENATOR KNOTTS: That's right. All  
16 right. You said two days later you went to the  
17 judge with the order and it had been on the news  
18 the night before.

19 MS. FENT: It was actually on the news  
20 the night of the plea.

21 SENATOR KNOTTS: Night of the plea.

22 MS. FENT: Right, that night. The --  
23 the media were there at the plea. Immediately  
24 after leaving the courtroom, they were interviewing  
25 the victims' parents. So it was on the news that

1 night.

2 SENATOR KNOTTS: Okay. If you had  
3 disagreed with the -- or didn't feel comfortable  
4 with the sentence that the judge handed down, would  
5 it not be normal that you would say, "Judge, I  
6 would like ask for you to -- I'm going to form --  
7 file a motion or ask you to reconsider this case,"  
8 or --

9 MS. FENT: No.

10 SENATOR KNOTTS: -- what point in time  
11 did you decide that you wanted to have the case  
12 rehear -- reheard?

13 MS. FENT: Well, the next day was  
14 immediately when we --

15 SENATOR KNOTTS: After it got on the  
16 news?

17 MS. FENT: This plea -- I think it  
18 ended, you know, close to around five o'clock.  
19 Everyone disbursed. Immediately the next morning,  
20 you know, we began discussing what do we need to do  
21 as an office. This is --

22 SENATOR KNOTTS: Had it been on the  
23 news yet?

24 MS. FENT: Yeah, the night before it  
25 had been on the news.

1                   SENATOR KNOTTS: So it already hit the  
2 news. The publicity was out there, and at that  
3 point in time y'all in the office decided that  
4 y'all wanted to sit down and decide what you were  
5 going to do. Was it solely because the sentence  
6 wasn't appropriate or was it because the news was  
7 going to be running it?

8                   MS. FENT: We have filed a motion for  
9 reconsideration because we believe that --

10                  SENATOR KNOTTS: But at that time you  
11 had not?

12                  MS. FENT: We filed the motion for  
13 reconsideration because we believe the probationary  
14 sentence not to be the appropriate one.

15                  SENATOR KNOTTS: Okay. I agree with  
16 you on that. But you filed that motion after it  
17 got on the news and y'all sat down in the office  
18 and discussed what you were going to do about it?

19                  MS. FENT: By virtue of -- yeah, just  
20 how everything happened, the filing of the motion  
21 was after it had been on the news.

22                  SENATOR KNOTTS: Okay.

23                  MS. FENT: The filing of the motion was  
24 after he sentenced her to probation.

25                  SENATOR KNOTTS: Right. Okay. After

1 the -- after the sentencing, did the family in any  
2 way show the displeasure to you, which they should  
3 have, for the sentence?

4 MS. FENT: Oh, immediately.

5 SENATOR KNOTTS: Immediately?

6 MS. FENT: Immediately.

7 SENATOR KNOTTS: Did you tell the  
8 family at that time that "I will ask for a  
9 rehearing," --

10 MS. FENT: At that time --

11 SENATOR KNOTTS: -- or did you wait  
12 until the next morning?

13 MS. FENT: At that time it was a matter  
14 of really emotionally calming down Mrs. Gaddie  
15 because she was in such shock. We had deputies  
16 coming out into the hallway to find out why she  
17 was -- you know, the noise was emanating --

18 SENATOR KNOTTS: And she had a right --

19 MS. FENT: -- from the hallway.

20 SENATOR KNOTTS: She had a right to  
21 be --

22 MS. FENT: Absolutely. Absolutely.

23 So, you know, it was after -- I mean, you are going  
24 to have discussions about what vehicle do we have  
25 now at our -- that we can go forward on, what our

1 are options, what can we do. It was after a  
2 discussion and a thorough thought that we filed  
3 that motion.

4 SENATOR KNOTTS: The first thing that  
5 would come to my mind when I had a situation like  
6 that, the first thing I'd do if I was a  
7 prosecutor -- and I've seen solicitors in this --  
8 in that office, Dick Harpootlian, Joe McCulloch,  
9 numerous solicitors who was in that thing.  
10 Whenever they had a sentence that they didn't agree  
11 with and -- and the victim was not happy with it  
12 and he wasn't happy -- he or she wasn't happy with  
13 it, they immediately told the victim, "Well, we  
14 will see about having a rehearing on this or a  
15 resentencing on this. We will file a motion," and  
16 explain to them what the -- what could or  
17 couldn't -- couldn't happen, and --

18 MS. FENT: I understand your --

19 SENATOR KNOTTS: -- it just concerns me  
20 that we waited until after -- only after -- after  
21 she -- she was upset, had a right to be upset, and  
22 only after it got on the news did the solicitor's  
23 office turn around and sit there and say, "Well,  
24 we'll file a motion today."

25 MS. FENT: It was definitely by virtue



1 of -- or after she was upset because that is  
2 immediately -- the minute probation came out of his  
3 mouth -- ten years suspended to five years  
4 probation, she was immediately upset. There was no  
5 pause in her, you know, displeasure of that.

6 I understand your -- I understand your  
7 criticism of our waiting to announce that we were  
8 going to file the motion to reconsider, but we  
9 actually had until the end of the week -- until  
10 Friday to file that motion. We had one day of  
11 discussion, calling the victims, telling them what  
12 we were going to do. The next day I typed up the  
13 motion. I filed that motion.

14 The -- the appropriateness of the  
15 sentence has nothing to do with how quickly we made  
16 the decision. Either probation is -- is an  
17 appropriate sentence or it's not.

18 SENATOR KNOTTS: That's right.

19 MS. FENT: How timely filed, you know,  
20 the motion is doesn't change that.

21 SENATOR KNOTTS: And the final  
22 question. Whenever you asked for a motion to  
23 reconsider the sentence, that -- and it's granted  
24 and you have the hearing, that hearing consists of  
25 one of three things that can happen. They can

1     either -- the judge can take into consideration the  
2     entire sentence. Basically he can increase the  
3     sentence. He can hold it as -- as he ordered it as  
4     the same sentence, or he can lower the sentence.

5                 So that is a resentencing, right? He's  
6     got to verify what he's going to do, whether he's  
7     going to uphold the sentence he gave, increase it  
8     to a different sentence, or lower it. That's a  
9     resentencing, right?

10                MS. FENT: I don't know if necessarily  
11     I would agree to that. I --

12                SENATOR KNOTTS: Well, tell me what it  
13     is then.

14                MS. FENT: Well, his -- his -- the  
15     sentencing sheet is signed, and it's -- and she has  
16     been serving probation on this case. I guess if  
17     there is no change in the decision of what the  
18     sentence would be, it is just --

19                SENATOR KNOTTS: He upholds the  
20     sentence.

21                MS. FENT: -- I am -- right, upholds  
22     the sentence.

23                SENATOR KNOTTS: He upholds his  
24     sentence. And if he change -- if he wishes to  
25     change it, he vacates that sentence and either

1 put -- and puts another sentence on there whether  
2 it be increasing the penalties or the penalties --  
3 and it's a totally different sentence then, right?

4 MS. FENT: Yeah, then --

5 SENATOR KNOTTS: Vacates the present  
6 sentence.

7 MS. FENT: Then I guess there would  
8 have to be a new sentencing sheet --

9 SENATOR KNOTTS: Right. And that's  
10 what happens?

11 MS. FENT: -- possibly filled out or  
12 amended.

13 SENATOR KNOTTS: Okay. Thank you.

14 CHAIRMAN McCONNELL: Representative  
15 Clemmons.

16 REPRESENTATIVE CLEMMONS: Thank you,  
17 Mr. Chairman.

18 Ms. Fent, thank you for coming back.  
19 It would be an understatement to say that I'm --  
20 I'm a little disappointed. I'm -- I am just  
21 absolutely upset at this moment because there has  
22 been perjury here today. We have heard totally  
23 opposing testimony between yourself and the judge,  
24 and I think it appropriate that you to be back here  
25 to respond to that opposing testimony. I'd like to

1 hear the judge's position after having heard you  
2 today.

3 The -- the actual testimony from the  
4 judge was that he had agreed with you to not rehear  
5 or hold a motion, but to resentence in this matter.  
6 And -- and your response to that is what, Ms. Fent?

7 MS. FENT: Well, what I heard him say  
8 was that I had approached the bench, that he had  
9 handed him the motion, that I asked him, "Will you  
10 hear it?" And he responded, "Yes, of course." And  
11 those two statements back and forth did not -- that  
12 was not our conversation.

13 REPRESENTATIVE CLEMMONS: Ms. Fent --

14 MS. FENT: Our conversation was as I  
15 stated.

16 REPRESENTATIVE CLEMMONS: He later went  
17 on to testify in response to a question posed by  
18 Mr. Sellers that not only had he agreed to rehear  
19 the matter, but he had agreed to resentence the  
20 defendant in the matter. So -- and your response  
21 to that is?

22 MS. FENT: I did not hear those words.  
23 What I heard was the, you know, initial statement,  
24 "She only slapped her," and then I said, "Well, I'm  
25 actually here on that case, Judge." I said, "I'm

1 giving you a copy of the motion to reconsider  
2 sentence, and he said, "If I hear it, will you call  
3 the media?" And then I just -- "I'm just giving  
4 you a copy of the motion, Judge. Thanks."

5 REPRESENTATIVE CLEMMONS: And your next  
6 conversation with anybody concerning that  
7 particular motion was when?

8 MS. FENT: Thursday when Paul Newell  
9 called me asking me -- this past week asking me --  
10 saying that the judge wanted to set this for a  
11 hearing, that they actually wanted to do it on  
12 Friday, the next day, and I said, you know, "I've  
13 got to call the victims. You know, they may be out  
14 of town," and that they said, "Well --" or he said,  
15 excuse me, you know, "Then Monday is a holiday, so  
16 could we do it Tuesday?" And I said, "As soon as I  
17 get a hold of the victims I'll call you right back  
18 and let you know."

19 REPRESENTATIVE CLEMMONS: Okay. Your  
20 understanding of that phone call, was that to  
21 schedule a motion to rehear the -- the matter of  
22 sentencing or was it a motion to resent -- or was  
23 it a hearing to resentence?

24 MS. FENT: My understanding, he was  
25 granting me a motion -- a motion for

1 reconsideration. He was granting me a hearing so  
2 that we could come back in front of him, you know,  
3 with the victim, with whatever it is that we wanted  
4 to present with him -- to him to reconsider the  
5 sentence that he gave.

6 REPRESENTATIVE CLEMMONS: Thank you. I  
7 think I need -- for my clarification, I need to ask  
8 just a couple more questions concerning -- since  
9 the testimony is at odds with testimony that's  
10 previously been presented, I think it would be  
11 helpful if we were to understand if there is any  
12 outside motivation for you to be here today to  
13 testify. Did you volunteer to be here? Would you  
14 help us understand what motivations you may have  
15 had other than the subpoena that you're under to be  
16 here.

17 MS. FENT: Just the -- the truth.  
18 There have been editorials written. There have  
19 been comments made in the media that perhaps there  
20 was some type of, you know, back room deal when  
21 you're reading all these articles in the paper. I  
22 just wanted to be here present in the courtroom so  
23 that if the ethics rules provided me and allowed me  
24 to respond, you know, to anything -- to any  
25 misstatements, anything that came up, that I would

1 be available to do that. I'm just here to tell you  
2 the truth.

3 REPRESENTATIVE CLEMMONS: Thank you  
4 very much, Ms. Fent.

5 CHAIRMAN McCONNELL: Any further  
6 questions?

7 The senator from Charleston.

8 SENATOR FORD: Attorney, the judge was  
9 on the bench when you approached him with the  
10 order?

11 MS. FENT: Yes, sir.

12 SENATOR FORD: He was on the bench?

13 MS. FENT: Yes, sir.

14 SENATOR FORD: With more cases?

15 MS. FENT: It was -- basically plea  
16 court was being run, so there could have been bond  
17 reduction motions, pleas --

18 SENATOR FORD: More cases? More cases,  
19 right?

20 MS. FENT: Right.

21 SENATOR FORD: Okay. But the only case  
22 you was concentrating on at the time was this  
23 particular case?

24 MS. FENT: Correct. The only reason I  
25 was in there was to approach him and hand him a

1 copy of the motion to reconsider.

2 SENATOR FORD: Okay. The judge is on  
3 the benches with other cases, and you didn't have  
4 no other cases except that one. And I take it that  
5 human nature -- I mean, human nature, like we have  
6 to deal with it. Our elected officials here have  
7 to deal with it. The State news came -- The State  
8 newspaper came out the night -- the next morning  
9 with a blistering story about they micromanaged the  
10 case, and so human nature would say to me -- to me,  
11 now maybe not you, but human nature would say to  
12 me -- and I've been -- I've been down in court a  
13 lot of times trying to clear my name. A lot. And  
14 I know what judge -- I know what lawyers do. They  
15 ask for a trial -- they ask for a retrial right  
16 then and there. You waited two days, right?

17 MS. FENT: I filed it two days later.

18 SENATOR FORD: And you say that you  
19 taught lawyers how to practice in court, right?

20 MS. FENT: Yes.

21 SENATOR FORD: Okay. Now human nature.  
22 The State newspaper came out the next morning,  
23 blastering (sic) you and the judge and everybody  
24 else for -- for what y'all did to this family. And  
25 so you're going to protect yourself. So the next



1 day your solicitor said, "What -- what are you  
2 going to do?" So human nature would tell me I  
3 better get to that judge and ask for a retrial.  
4 Didn't it happen like that?

5 MS. FENT: No, sir.

6 SENATOR FORD: Why didn't you do it  
7 then and there?

8 MS. FENT: We filed it in a timely  
9 manner.

10 SENATOR FORD: I understand that. You  
11 had seven days. That's not what I'm asking. Why  
12 didn't you do -- listen. This case is on the  
13 news -- all over the news. I mean, this is a  
14 serious -- this is a serious case. You was upset  
15 with the judge for this kind of ruling. Y'all say  
16 you didn't cop a plea -- I mean, you didn't meet  
17 with other -- the lawyer and y'all didn't agree on  
18 nothing. So you upset with the judge.

19 It seemed to me to show the family a  
20 lot of concern where they wouldn't have to go to  
21 bed that night with all this stuff on their mind --  
22 I mean, that's what my lawyers did for me the times  
23 I was arrested. He didn't want me to go to bed not  
24 thinking that he had done his best, so he asked for  
25 a retrial right then and there. Why didn't you?

1 MS. FENT: We gave it thoughtful  
2 consideration the next day.

3 SENATOR FORD: Sure. When The State  
4 newspaper came out, right?

5 MS. FENT: And decided after thoughtful  
6 consideration that this was the right thing for us  
7 to do.

8 SENATOR FORD: Because The State  
9 newspaper going to be blastering the -- not only  
10 this judge -- this incompetent judge but these  
11 incompetent solicitors in Richland County. I read  
12 The State newspaper all the time. They do it to  
13 y'all a lot. I mean, they do it to y'all -- y'all  
14 a lot. Y'all can't do no work -- y'all can't --  
15 everything y'all do is wrong according to them, and  
16 y'all say -- you say, "No, I'm not going to be a  
17 part of this," so you hurried up and went and  
18 brought it to the judge while he's sitting on the  
19 bench. You didn't even send a -- your assistant to  
20 do it. You did it yourself, right?

21 MS. FENT: I don't have an assistant.

22 SENATOR FORD: But you did it yourself.

23 MS. FENT: I did it myself.

24 SENATOR FORD: You said, "Judge,  
25 listen, I'd like -- I'd like a retrial." I mean,

1     that's human nature. I would have done the same  
2     thing.

3                   MS. FENT: I filed it based on the  
4     facts of the case.

5                   SENATOR FORD: Yes, ma'am.

6                   CHAIRMAN McCONNELL: Let me ask you  
7     very quickly, what was the condition of -- of  
8     your -- I guess your victims after this person had  
9     not received any time in jail? Can you describe  
10    her condition that you were confronted with.

11                  MS. FENT: Well, she was immediately,  
12    you know, very loud, just repeating, "Why -- what  
13    just happened?" I mean, a very loud -- a very loud  
14    voice. We immediately, you know, escorted her out  
15    of the courtroom out into the hallway. We were  
16    standing in the hallway. I remember the deputies  
17    starting to come out, and she basically was unable  
18    to even standstill. She was, you know -- couldn't  
19    figure out if she wanted to walk down the stairs  
20    and just leave or come back and talk to me.

21                  I couldn't even discuss anything with  
22    her at that point at all. And she just kept  
23    repeating to herself, "What just what happened?  
24    What just happened? What just happened?" over and  
25    over and over again. So there was very little

1 discussion that night, very little ability to even  
2 have an intelligent, thoughtful conversation with  
3 her about what our next move was.

4 CHAIRMAN McCONNELL: And do you recall  
5 about what time of the day this was?

6 MS. FENT: It was the end of the day.  
7 I mean, it was 4:00 or five o'clock. It was the  
8 end of the day.

9 CHAIRMAN McCONNELL: And so -- and it  
10 was the next day that -- that you made a decision,  
11 and was your -- was the victim in any way  
12 prejudiced by the actions that you took?

13 MS. FENT: Absolutely not.

14 CHAIRMAN McCONNELL: Thank you.

15 SENATOR KNOTTS: Mr. Chairman.

16 CHAIRMAN McCONNELL: Yes, sir, the  
17 senator from Lexington.

18 SENATOR KNOTTS: I was pretty well  
19 clear until you asked that last question -- or the  
20 question before the last one. Did you do it the  
21 next day or did you do it two days later?

22 MS. FENT: Two days later. I said we  
23 decided to --

24 SENATOR KNOTTS: So it was the next  
25 day.

1 MS. FENT: The next day the decision  
2 was made that we would file one after discussion  
3 and thoughtful consideration as to what our options  
4 were. I actually physically typed it up and filed  
5 it the following day.

6 SENATOR KNOTTS: And that was after it  
7 got on the news?

8 MS. FENT: It was clearly on the news  
9 the night the plea happened.

10 SENATOR KNOTTS: Okay.

11 CHAIRMAN McCONNELL: Are there any  
12 other questions?

13 Thank you, ma'am.

14 Judge Goode, I'm going to ask you to  
15 come up and -- and respond.

16 JUDGE GOODE: Yes, sir.

17 CHAIRMAN McCONNELL: You have that  
18 opportunity.

19 JUDGE GOODE: Absolutely. First very  
20 briefly, there might be some questions about what  
21 took place when they requested a hearing on whether  
22 I would resentence. Mr. -- or, Representative  
23 Clemmons, I think that is where some of the  
24 confusion has come. It was a motion asking me if I  
25 will hear arguments on whether or not there should

1 be a resentence. And there was a lot of discussion  
2 about that, and in that I may have misspoken, and  
3 if I did, I hope her comment and mine together lets  
4 you know what type of instrument -- document we're  
5 talking about.

6 But at my desk never have I -- it is  
7 simply not in my demeanor to respond to an attorney  
8 in the manner in which she represented. I can't  
9 account for her recollection, but I just -- that's  
10 not how I go. I treat people with courtesy, and  
11 certainly an officer of the court and I take issue  
12 with that completely.

13 CHAIRMAN McCONNELL: Anything else,  
14 sir?

15 JUDGE GOODE: No, sir.

16 CHAIRMAN McCONNELL: Are there any  
17 questions?

18 All right. Thank you, sir.

19 JUDGE GOODE: Thank you.

20 CHAIRMAN McCONNELL: All right. Then  
21 we will revert back to the -- the Gavin matter.

22 All right. Do you want to tell us who  
23 your next witness is.

24 MS. SHULER: I have one more witness  
25 who has filed a complaint, Tonya Graves. Is she

1 present? Did she decide -- no, this is a different  
2 case. We're now dealing with Mr. Zail Gavin.

3 CHAIRMAN McCONNELL: We're back on the  
4 Gavin matter.

5 MS. SHULER: The Gavin matter. I would  
6 like to call Heath Taylor then.

7 CHAIRMAN McCONNELL: Mr. Taylor, if  
8 you'd raise your right hand, please, sir. Do you  
9 swear to tell the truth, the whole truth, and  
10 nothing but the truth, so help you God?

11 MR. TAYLOR: I do.

12 CHAIRMAN McCONNELL: Thank you, sir.  
13 Please answer any questions Ms. Shuler has got for  
14 you.

15 MR. TAYLOR: Yes, sir.

16 MS. SHULER: Mr. Taylor, you have filed  
17 an affidavit, and you are also the attorney who  
18 represented Mr. Gavin in 2005 charges that were  
19 pending in Lexington County; is that correct?

20 MR. TAYLOR: Yes, ma'am.

21 MS. SHULER: I'm going to have your  
22 affidavit provided to you, and if you will, review  
23 that.

24 MR. TAYLOR: Yes, that appears to be my  
25 affidavit.

1 MS. SHULER: I'd like to have that  
2 marked as an exhibit and then returned to  
3 Mr. Taylor.

4 (EXH. 15, Affidavit of Heath P. Taylor,  
5 marked for identification.)

6 MS. SHULER: I would like to start by  
7 going through the sequence of events involving the  
8 charges you represented him on, and then follow up  
9 with allowing you to respond to the allegation that  
10 you worked out some sort of deal because you were  
11 friends with the judge.

12 MR. TAYLOR: Oh, I'd very much like to  
13 do that. But would you just like me to go in  
14 chronological order --

15 MS. SHULER: Yes, sir.

16 MR. TAYLOR: -- from the beginning of  
17 the case?

18 As is noted in my affidavit, I was  
19 retained in July of 2005 to represent Mr. Gavin.  
20 Mr. Gavin came to me with a quite significant  
21 record from his past. He was on probation  
22 following a plea in Greenwood County before Judge  
23 Hughston where he had pled to Peeping Tom,  
24 possession of crack second and burglary third. He  
25 received a concurrent two year active sentence on



1 each charge with five years probation upon his  
2 release. His probationary sentence commenced on  
3 February 20th of 2002. He -- and was scheduled to  
4 end on February 19th, 2007. As a result of the  
5 Peeping Tom charge, he was required to register as  
6 a sex offender.

7 I am not prepared to tell you here  
8 today the specifics of the Greenwood charges  
9 because I didn't get in great detail with -- with  
10 my client on those. I know and as my affidavit  
11 indicates a significant portion of all of  
12 Mr. Gavin's problems -- and I'm putting stuff that  
13 was put on the record -- was related to drugs. His  
14 story on the Greenwood charges, he was -- he was  
15 cutting through yards on a drug deal when he was  
16 seen out somebody's window apparently by a young  
17 girl. And, you know, that was his story. I don't  
18 know if it's true. Apparently Judge -- Judge  
19 Hughston bought some of it because he didn't put  
20 him in jail for more than two years on all three of  
21 those pretty serious charges.

22 But in any event, we were faced in this  
23 case with a charge for Peeping Tom and two charges  
24 of failure to register as a sex offender. What had  
25 happened was Mr. Gavin had moved into the Quail

1     Hollow neighborhood in Lexington County. During  
2     that period he was renovating the home -- and when  
3     I say moved, he had purchased a home, but he was  
4     renovating the home at night. It was next door to  
5     some folks, and Mr. Gavin claimed that he was out  
6     looking for his dog. They actually presented to me  
7     records later on from where the dog had been  
8     recovered and there was some veterinary bills.

9             But in any event, this Peeping Tom  
10    charge in the Quail Hollow neighborhood, he was  
11    allegedly standing in the yard. Now, not -- mind  
12    you, not -- not up against the window behind the  
13    shrubbery or climbing in a tree to peek in the  
14    window. He was standing in the front yard of a  
15    home with -- I would guesstimate -- I mean, I drove  
16    to the scene myself, but a six-by-six bay window on  
17    the front of the home with no curtains or no  
18    blinds.

19            So we weren't looking at the  
20    traditional Peeping Tom type charge. It was -- he  
21    was seen standing in the front yard he contends  
22    looking for a dog. When he was confronted, he  
23    contended that he fled because of his past. He --  
24    and I presented it that way to Judge Goode. This  
25    man wasn't going to get the benefit of the doubt

1 being on the sex offender registry and with his  
2 past criminal history because it was quite  
3 significant.

4                   However -- and as far as the failure to  
5 register, he was charged with failure to register  
6 because he had been sleeping at that home some  
7 while he was doing the renovations. His fiancée  
8 and son had not moved in with him, but he had been  
9 sleeping there some, so they -- they treated that  
10 as a technical violation or failure to notify the  
11 sheriff's department within ten days of a move.

12                   So that's what we were looking at. We  
13 weren't looking at where he moved across town into  
14 a shady apartment in -- in the ghetto to hide. We  
15 weren't looking at anything at least on its face  
16 that seemed very serious to the solicitor's office  
17 in my opinion. As I said in my affidavit, but for  
18 his past criminal history, I probably -- we  
19 probably would have gone to trial on the Peeping  
20 Tom case. I believe it was that bad of a case for  
21 the state.

22                   So with that being said, the case was  
23 called before Judge Goode on February -- I believe  
24 it was February 14th, Valentine's Day, 2006. We --  
25 the case was called at the -- or by the solicitor.

1 That's when we were notified to be there, and we  
2 presented the plea to Judge Goode. There was also  
3 a probation violation as well that I did not  
4 mention because he had the other charges pending.

5 What was important in this case and --  
6 well, let me back up. After viewing everything,  
7 Mr. Gavin did agree to plea, but we're pleading to  
8 the Peeping Tom under the North Carolina versus the  
9 Alford doctrine, and for those of you that are not  
10 lawyers or criminal lawyers, that is a plea whereby  
11 a defendant admits that the state can produce  
12 sufficient evidence to convict, but you do not  
13 actually admit guilt.

14 And Judge Goode allowed him to plead  
15 under that doctrine. Some -- some judges don't,  
16 some do, because they want a full admission of  
17 guilt. Well, he pled to the Peeping Tom under  
18 North Carolina versus Alford and pled straight up  
19 on the one failure -- one count of failure to  
20 register. The other was -- was dismissed because  
21 it was actually issued in error.

22 At the -- during the sentencing, Judge  
23 Goode sentenced Mr. Gavin to 90 days, which he was  
24 required to do. That was a minimum mandatory on  
25 the failure to register. Allowed him to serve that

1 on the weekends. Gave him three years suspended on  
2 the service of 90 days, an additional four years of  
3 probation on the Peeping Tom charge.

4 With everything you've heard about this  
5 man, at least from the folks that testified  
6 earlier, at this juncture in his life I submit to  
7 you that it would have been -- it was more  
8 appropriate to keep this man out of jail than to  
9 put him in jail. There were -- and it would have  
10 probably been easier -- easier at that time to  
11 find -- find a judge to keep him out of jail -- not  
12 talking about Judge Goode, any other judge.

13 What had happened during -- again --  
14 and all this was presented in open court, but the  
15 Peeping Tom case was not a -- a strong case. So  
16 that -- that's one issue to give the man a break  
17 on. Second, and very importantly, Mr. Gavin's  
18 problems were always associated with drugs and  
19 alcohol. Always.

20 Mr. Gavin had at that point been on  
21 probation for four years. Four years is a long  
22 time to be on probation. He had absolutely no  
23 violations. None. No -- no failed alcohol tests.  
24 No failed drug tests. Nothing. So he had  
25 basically -- and he was -- had been on intense

1 supervision and had been discharged from the sex  
2 offender counseling unit by the counselor and his  
3 probation agent. So by all accounts when he  
4 appeared before Judge Goode and -- on February  
5 14th, 2006, he had turned his life around from a  
6 criminal standpoint, and he was -- he was getting  
7 it all right.

8 I mean, it's -- I know for those of you  
9 that don't kick around, so to speak, in the General  
10 Sessions Court, it is hard to find somebody that's  
11 been on probation for four years with no violation  
12 at all. I mean, this guy didn't have a failure --  
13 failure to report violation, not a change of  
14 address violation. I mean, if you got a probation  
15 officer and you're a sex offender, they watch you  
16 hard, I mean, really hard. And this guy had not  
17 stumped his toe. The only thing he was -- by the  
18 time we got to court he was \$120 in arrears on his  
19 fees that he owed. But, otherwise, he had done  
20 nothing at all wrong.

21 During that period he had worked for  
22 about a year as a paint -- for a painting  
23 contractor, saved his earnings, opened his own  
24 company which by all accounts appeared very  
25 successful, and he had -- at the time of this plea

1 had ten employees working for him. Had two  
2 children he was actually paying support for at the  
3 time.

4 I also brought in to -- up to Judge  
5 Goode I think the lady that testified here earlier  
6 about -- that she -- she has -- has a child with  
7 Mr. Gavin. There was a family court proceeding  
8 between the two of them where she and her lawyer  
9 ultimately consented to visitation with the child.  
10 He was paying support during that court case --  
11 family court case. Mr. Gavin was reviewed by two  
12 doctors and had his conduct reviewed by a guardian  
13 ad litem and who all -- who concurred to the fact  
14 that he was -- could appropriately be around  
15 children. I presented those two doctors' reports  
16 to Judge Goode at the hearing as well at the plea.

17 We also presented Dr. Tom Martin.  
18 Actually -- I brought in my doctor, my expert at  
19 this hearing. Dr. Martin has an excellent  
20 reputation in the judiciary for dealing with sex  
21 offenders and -- and their risks, if you will, to  
22 re-offend. Dr. Martin testified at the hearing  
23 that Mr. Gavin was at a very low risk to re-offend.  
24 He had made remarkable progress. He also noted  
25 that most of his troubles had been related to drugs

1 and alcohol and concurred in the other two  
2 assessments that he -- he was not a danger to  
3 society.

4 Finally -- well, not finally, but the  
5 probation agent in this case was only recommending  
6 a revocation of 90 days to be run concurrent with  
7 whatever else he got. His probation agent was the  
8 one person that knew at that time Zail Gavin better  
9 than anybody. She had been living with him for  
10 four years. Putting up with him once, twice a week  
11 sometimes because he was on intensive supervision,  
12 and she was only requesting 90 days revocation  
13 instead of a full revocation.

14 An important thing to understand when  
15 we are at a plea, this judge -- and I think some  
16 folks hit on it. This is a snapshot of this man's  
17 life that the judge gets in about an hour, at most,  
18 at the very most if they're moving quick. He -- he  
19 has to rely on people like the probation agent,  
20 people like the solicitor, people like my doctor to  
21 give him the information in a big hurry. And,  
22 again, this was a -- this was his probation agent  
23 who was only recommending a 90 day revocation, and  
24 basically that's what he gave.

25 He gave him 90 days to be served on



1 weekends so he could in fact continue what by all  
2 accounts was a profitable business at the time and  
3 to continue to keep his employees working and to  
4 continue to take care of his children because at  
5 that time -- again, I don't know what happened  
6 after that. But at that time the system was  
7 working for Zail Gavin. Again, I think you would  
8 have been hard-pressed to find a judge in South  
9 Carolina at that time that would have put him in  
10 jail under these -- these facts. It was -- it was  
11 just not a bad case. Again, but for his history,  
12 we probably would have gone to trial on -- on the  
13 Peeping Tom charge.

14 I know -- I also mentioned in my  
15 affidavit that there's a sentencing sheet -- and  
16 you have a copy of the sentencing sheet. And  
17 you'll note in my case -- or on this sentencing  
18 sheet, it says without negotiations or  
19 recommendations. There's another box on there  
20 where a solicitor can check recommendation, and  
21 they could have put three years 90 days under that,  
22 but she didn't.

23 And that's sort of -- you know, she  
24 could have written it on that sentencing sheet what  
25 she was recommending, and she basically left it up

1 to the judge. So there was no abuse of discretion  
2 here. There was nothing out of line here. It was  
3 an entirely appropriate decision that many of the  
4 members of our bench would have made in this case.  
5 It's just a unique case, at least from my  
6 perspective, to have that many good things going  
7 for somebody that's been labelled a sex offender  
8 and be able to defend him in that manner.

9 I'll answer any other questions you may  
10 have.

11 MS. SHULER: Mr. Taylor, I -- I would  
12 like you to have the opportunity to respond to the  
13 allegation made that you hunted and fished with the  
14 judge, that you are social friends, and that's the  
15 reason he received -- Mr. Gavin received this 90  
16 day sentence.

17 MR. TAYLOR: That is an absolute  
18 fabrication by this lady or either the gentleman  
19 that gave her that information.

20 I probably -- what I probably would  
21 have told Mr. Gavin is that "If you got -- you  
22 know, this is as good -- the solicitors called your  
23 case this week. This is as good a chance as you  
24 have for getting a good sentence." I mean, there's  
25 no secret that Judge Goode is not the harshest

1     sentencer on our bench. So if a solicitor will  
2     call a case in front of him, certainly we want to  
3     get the case done.

4                     Now -- and I may have mentioned  
5     something to the effect that, you know, I have -- I  
6     know him, you know, from -- actually my mother's  
7     family is from Winnsboro and, you know, Judge Goode  
8     is from Winnsboro, but at that time socially  
9     nothing like that. To my knowledge Judge Goode  
10    does not even hunt and fish. If he does, he  
11    doesn't do it with me.

12                    The only time I can definitively say  
13    that I have been to lunch with Judge Goode was this  
14    past August down at the trial lawyers conviction  
15    when the whole judiciary was there and we just  
16    happened to go to lunch. But I can't tell you any  
17    other time for sure that we've ever even been to  
18    lunch.

19                    That's just absolute -- there's no way  
20    I would have an ex parte communication with Judge  
21    Goode over lunch about this case or any other case  
22    for that matter. I don't -- I don't have a  
23    criminal case or a civil case or any other -- other  
24    type of case that is worth me losing my law license  
25    over. I can assure you of that.

1 MS. SHULER: Thank you.

2 MR. TAYLOR: And that's -- you know, I  
3 want to also while we're, I guess for lack of a  
4 better term, Monday morning quarterbacking what  
5 Judge Goode has been doing in these cases, in this  
6 case Mr. Gavin had one year probation left and he  
7 could have gotten a three year 90 day sentence.  
8 Judge Goode extended his probation and -- and  
9 kept -- and retained jurisdiction to keep him on  
10 supervision.

11 Had he given him three years and 90  
12 days and revoked his probation and -- and run it  
13 concurrent, Mr. Gavin would have been out probably  
14 in about a year to 18 months with absolutely no  
15 supervision. No electronic monitoring. He -- he  
16 would have basically maxed out his sentence. If  
17 he'd given that, it would have been around 18  
18 months, and he would have been out with no  
19 supervision at all.

20 So, you know, while we're looking back  
21 at it, it's probably -- in retrospect for this man  
22 to have some supervision, but that's where we are.  
23 I know there are a number of things that happened  
24 after that that I -- I was not involved in, but  
25 I'll certainly answer any questions that the

1 Commission may have.

2 MS. SHULER: I have one more question.

3 MR. TAYLOR: Yes, ma'am.

4 MS. SHULER: Is it unusual for a judge  
5 to retain jurisdiction over a criminal case?

6 MR. TAYLOR: I don't know that it is  
7 per se unusual. I -- that's probably the first  
8 time it has ever happened to me in a case I was  
9 handling, but I guess that would be up to the  
10 individual judge.

11 I mean, some -- some judges -- you got  
12 to understand Judge Goode. I mean, he -- he is  
13 probably one of the most compassionate judges on  
14 our bench, and he saw -- I'm sure he saw in my  
15 client somebody he was going to help continue  
16 rehabilitating themselves. You know, it -- it was  
17 clear from the facts presented to him that my  
18 client was trying to rehabilitate himself. Again,  
19 I don't know what happened after that, but he had  
20 come down the right road, and I'm sure Judge Goode  
21 saw that -- saw him that way, you know.

22 And I know I'm here to answer your  
23 questions, but I would like to, you know, after the  
24 questions are over just say a little something  
25 about Judge Goode.

1 CHAIRMAN McCONNELL: The senator from  
2 Charleston.

3 SENATOR FORD: Attorney, you used some  
4 words that I have no -- have no idea what you were  
5 saying. Something about communication. What was  
6 that about?

7 MR. TAYLOR: Ex parte communication,  
8 that --

9 SENATOR FORD: What is that?

10 MR. TAYLOR: That would be me having  
11 a -- some sort of communication with a judge  
12 outside the presence of opposing counsel.

13 SENATOR FORD: So you couldn't say  
14 that? You had to use them legal words on me?

15 MR. TAYLOR: I'm sorry, Senator.

16 CHAIRMAN McCONNELL: Any other  
17 questions?

18 Representative Mack.

19 REPRESENTATIVE MACK: Thank you. Thank  
20 you, Mr. Chairman.

21 I was curious. With -- all the data  
22 that -- that I've seen basically says that sex  
23 offenders a lot of times cannot be rehabilitated.  
24 There's a lot of data on that. There's been a lot  
25 of programs, and you were able to get someone to

1     come in that said basically, as you touched on,  
2     besides from the drugs and alcohol, he got himself  
3     clean, supposedly that he was okay.

4                   MR. TAYLOR:   Yes, sir.

5                   REPRESENTATIVE MACK:   Can -- can you  
6     comment some more about that?   Have you had other  
7     cases like that where a sex offender you've been  
8     able to sort of through the judicial system kind of  
9     get them off?

10                  MR. TAYLOR:   I have had other cases  
11     where we've had doctors come testify as to what  
12     their risk may be.   I've had -- in working up a  
13     case for trial, I've had doctors -- I've actually  
14     had a client that was basically run through a  
15     battery of tests to see if he was a pedophile at  
16     all.   We were using that to ultimately obtain a --  
17     you know, a dismissal.

18                  But, yeah, I mean, I think the science  
19     is good on these doctors and how they assess them.  
20     They put them through a battery of tests.

21                  REPRESENTATIVE MACK:   Now, Mr. Gavin,  
22     for example, has a long history of a variety of  
23     different things, and -- and, you know, you were  
24     saying he was around the house, but he wasn't  
25     peeping in the house, and he's off the drugs and

1 alcohol, and he just happened to be in the wrong  
2 place at the wrong time. Can you kind of elaborate  
3 on that because it's kind of hard to connect the  
4 dots as it relates to that.

5 MR. TAYLOR: Well, I don't -- I don't  
6 know if I'm sure exactly what you're looking for  
7 here, but, I mean, again, back to Mr. Gavin,  
8 specifically it was all drugs and alcohol. When he  
9 was doing things that were bad, I mean, it was  
10 related to drugs and alcohol. He never -- even  
11 though he was a sex offender, he never touched  
12 anybody. He had had -- ask you, sir, to just  
13 please be quiet while I'm trying to speak.

14 But he never had -- the only -- the  
15 only -- there was actually some testimony here  
16 about something in Illinois, but that was almost  
17 like a -- a -- an older -- a consensual sexual  
18 relationship with someone under 16, you know,  
19 basically our statutory rape that we had the great  
20 debate over a couple years ago with the Romeo  
21 clause and all that good stuff. But he had never  
22 physically touched anybody in any of his sex  
23 offenses in a nonconsensual manner. So that's what  
24 made him a little different as well.

25 REPRESENTATIVE MACK: Okay. Well --



1 MR. TAYLOR: And -- and I don't know  
2 where he is now. He --

3 REPRESENTATIVE MACK: Okay. From what  
4 you've seen, how long has -- as in your words, he's  
5 been okay since he's been off the drugs and  
6 alcohol?

7 MR. TAYLOR: The case I handled which  
8 was pled, again, February of 2006, he had been drug  
9 and alcohol free for four years.

10 REPRESENTATIVE MACK: Okay.

11 MR. TAYLOR: Now, again, I think  
12 Mr. Swerling is here for sure, and Mr. Swerling  
13 knows where he is today and -- and what's going on  
14 today, but at that time based upon everything Judge  
15 Goode had before him that day, his -- I don't think  
16 his sentence can be questioned. It was absolutely  
17 appropriate under those circumstances.

18 CHAIRMAN McCONNELL: Are there any  
19 other questions?

20 Thank you, sir.

21 MR. TAYLOR: Mr. Chairman, can I  
22 have --

23 CHAIRMAN McCONNELL: No, sir. Let me  
24 tell you why. If I let you start testifying in  
25 favor of him, then I have to start letting folks

1     who want to testify --

2                   MR. TAYLOR:   I understand.

3                   CHAIRMAN McCONNELL:  -- opposite.  So  
4     we had decided as a commission to hold very  
5     strictly in a very narrow course, and that is to do  
6     exactly what the General Assembly told us to do and  
7     nothing more.

8                   MR. TAYLOR:   I understand.  Thank you,  
9     Mr. Chairman.

10                  CHAIRMAN McCONNELL:  And I can tell you  
11    you're a very eloquent speaker.

12                  MR. TAYLOR:   Thank you, sir.

13                  SENATOR FORD:   Sounds like one of them  
14    Broad Street lawyers.

15                  MR. TAYLOR:   Don't call me one of  
16    those, Senator.

17                  MS. SHULER:   Mr. Swerling.

18                  CHAIRMAN McCONNELL:  Yes, sir, if you'd  
19    be so kind as to raise your right hand.  Do you  
20    swear to tell the truth, the whole truth, and  
21    nothing but the truth, so help you God?

22                  MR. SWERLING:  I do.

23                  CHAIRMAN McCONNELL:  Thank you, sir.  
24    Please answer questions.

25                  MS. SHULER:   Mr. Swerling, you

1 currently represent Mr. Gavin; is that correct?

2 MR. SWERLING: Yes. There's nothing  
3 pending right now, but I -- we represented him  
4 through the February 9th hearing.

5 MS. SHULER: And when were you first  
6 retained by Mr. Gavin?

7 MR. SWERLING: Back in July or August  
8 Greg Harris was contacted by Mr. Gavin concerning  
9 an arrest that arose July 23rd from a July 4th  
10 incident where he was in his house naked, and he  
11 was arrested for indecent exposure. Mr. Harris got  
12 me involved in the case sometime I believe in  
13 September. I think it's in my affidavit.  
14 September 14th or 19th. We had a preliminary  
15 hearing in Richland County and charges were  
16 dismissed for lack of probable cause. The elements  
17 of the offense were not met because he was inside  
18 his house.

19 I went ahead in October and immediately  
20 filed -- I believe it was October -- for an  
21 expungement of those records, and those records  
22 were expunged by court order I believe it was  
23 October 15th. Notwithstanding that, the probation  
24 office still wrote him up for a violation on that,  
25 on an expunged record.

1 MS. SHULER: In fact, it was that  
2 violation that made -- was one of the reasons that  
3 his probation revocation hearing was brought in  
4 February 2nd.

5 MR. SWERLING: That's one of them.

6 MS. SHULER: One of the violations.

7 MR. SWERLING: There were -- and I can  
8 address that if you'd like.

9 MS. SHULER: Yes, I would.

10 MR. SWERLING: Just kind of give you a  
11 little bit of the history here after Mr. Taylor.  
12 Back on May 28th there was a hearing -- and I was  
13 not the lawyer on, but I have the transcript.

14 MS. SHULER: Okay.

15 MR. SWERLING: And certainly you can  
16 have this. And I'm sorry, I keep hitting this.  
17 I'm too big up here.

18 SENATOR FORD: You mean big, like --

19 MR. SWERLING: Big this way.

20 SENATOR FORD: -- big time lawyer.

21 MR. SWERLING: Yeah, this way.

22 But, anyway, he was represented at that  
23 time by Jake Moore, Jr., on some probation  
24 violations, and Judge Goode was the one that -- of  
25 course he had continuing jurisdiction on the

1 case -- was the one that heard that probation  
2 violation. Ms. Vandyke from the Richland County  
3 sheriff's department -- Richland County probation  
4 office was there at the hearing.

5 Basically -- and I think I reflected  
6 that in my affidavit, and certainly you can have  
7 this transcript. They were GPS monitoring the  
8 violations. Now, let me -- and one of them was a  
9 disorderly conduct. That disorderly conduct I  
10 believe eventually ended in a not guilty verdict  
11 that Mr. Moore tried.

12 But the GPS violations, as you know,  
13 people will wear an ankle bracelet. I have no  
14 problem with that, and I think we have to have  
15 those kinds of things for sexual offenders. And I  
16 understand the principle behind GPS monitoring.  
17 What I don't understand and what I've always had an  
18 issue about is that the probation office as  
19 understaffed as they are and as good a job as they  
20 do and as underpaid as they are, they feel  
21 compelled to bring these cases in front of a  
22 circuit judge for probation revocations on simple  
23 GPS violations.

24 And I -- when I mean simple, I'm not  
25 talking about going to near a victim. I'm not

1 talking about going out and committing a criminal  
2 offense. What I'm talking about is going  
3 downstairs from your residence, having the GPS  
4 monitor upstairs and forgetting it's not  
5 connecting, leaving and going to the dentist and  
6 you forget your GPS monitor at the house, going  
7 from one place to another and forgetting -- and  
8 being off monitor from 15, 20, 25 minutes.

9 In none of these cases was Mr. Gavin in  
10 addition to any GPS monitoring violations which  
11 were brief duration -- I don't think any of them  
12 was over 30 minutes, and there was an explanation  
13 for each one of them. And none of those did  
14 Mr. Gavin commit any kind of other offense. So I  
15 have a real problem with that. It's a -- to me  
16 it's a waste of resources and it is trying to tie  
17 these people and redistrict them too much  
18 because -- everybody forgets things.

19 The older I get, the more I forget when  
20 I go out of the house in the morning. I mean, I  
21 may have to go back two, three times to get my  
22 glasses, get my phone, whatever it may be. It's  
23 just as easy for these folks to go ahead and forget  
24 it as well. But that was the essence of the  
25 hearing on May 27th, and Judge Goode, rightfully so

1 in my opinion -- my humble opinion, did not feel  
2 those GPS monitoring violations warranted a  
3 probation revocation, and as a result of that, he  
4 did not revoke his probation.

5 Now, a lot has been said about, you  
6 know, what he's done and how he's treated people.  
7 The reason -- and you want to read this transcript.  
8 The reason there was a -- any kind of comment  
9 between him and Ms. Vandyke is because what he was  
10 telling Ms. Vandyke is that "I -- your restrictions  
11 are not what I intended to impose on Mr. Gavin."  
12 And there was a little bit of a discussion there as  
13 to who had the right to control the restrictions.

14 And Judge Goode simply said, "I gave  
15 you the authority to go ahead and put -- he's on  
16 probation, but I control the restrictions." And  
17 you can see that. And what he told him is he  
18 wanted them -- before anyone tightened those  
19 restrictions any further than they were in  
20 existence at that time, that they should come back  
21 in front of him and go ahead and go over those with  
22 him.

23 But he also told -- I'd like to read to  
24 you what he told Mr. Gavin that day. "I find your  
25 history and your offenses to be extraordinarily

1 offensive."

2 PROFESSOR FREEMAN: What -- what page  
3 are we on?

4 MR. SWERLING: This is on -- Professor  
5 Freeman, it's page 21 of the May 27 hearing.

6 MS. SHULER: We'll get a copy of it.

7 MR. SWERLING: I can leave it with you.  
8 But essentially what he says -- this is a quote.  
9 "I find --" this is directed to Mr. Gavin. "I find  
10 your history and your offenses to be  
11 extraordinarily offensive. I don't want you to  
12 think that the fact that I'm allowing you to stay  
13 on probation diminishes my feelings. I can't use  
14 the words that I would normally use. But  
15 disappointment in any human that would do the  
16 things that you have done. You've got to do what  
17 they say." That's the probation office.

18 And then the last part of that hearing  
19 he told the probation officer, "I don't want you to  
20 tighten them any more," referring to the  
21 restrictions. "If you feel like there's a reason  
22 for there to be additional restrictions placed on  
23 the man, I direct you as the supervisor of -- who's  
24 over him to run them past me and explain to me  
25 why." That's the way that hearing ended on May 27.



1                   Now, I'm -- again he was arrested  
2     January -- July 23rd on the indecent exposure  
3     charges that I eventually had dismissed at the  
4     preliminary hearing. Judge Goode wasn't involved  
5     in that at all. It was really an elements issue,  
6     and so the record was expunged.

7                   We originally were supposed to have  
8     this hearing on -- in December, but the matter was  
9     postponed. And what I'd like to explain to members  
10    of the Commission, in the situation we had with the  
11    first case, Judge Goode had jurisdiction in  
12    Richland County, and because that motion was filed,  
13    he retained jurisdiction by virtue of the filing of  
14    that motion.

15                  The case was not over at that point.  
16    The time would not start running from appeal  
17    because that motion stayed and held in abeyance any  
18    further action in that case. Richland County is  
19    the proper venue to come back in. And in our case  
20    because it did not go forward in December, I  
21    consented along with the probation officer to go to  
22    Winnsboro and have it heard. Had the probation  
23    officer objected or had we objected, it could not  
24    have been heard in Winnsboro where Judge Goode  
25    sits. It would had to have been heard in Richland

1 County. But probation wanted it over with, and we  
2 wanted it over with.

3 There were four violations that were  
4 going on at that time. There was a -- and I'd like  
5 to just briefly cover those just so you understand  
6 the scope of this. Three of them were GPS  
7 monitoring violations, again, all of short  
8 duration, and when -- again, I say short.  
9 Somewhere between 15 to 25 minutes, all of which  
10 were explained.

11 One of the violations was that he  
12 was -- prior to I think the October 23rd, he  
13 thought he was going into a rehab center the  
14 following week, and his common law -- what I  
15 understand to be his common law wife, Lucy McCravy  
16 came down from North Carolina with their  
17 four-year-old son -- three-and-a-half to  
18 four-year-old son, Tucker, stopped by his house  
19 and -- to see him to say goodbye. She ran out to  
20 the store, as I understand it, and was only out of  
21 the house for a very short duration, at which time  
22 all of the sudden lo and behold the probation  
23 officer shows up and arrests him because he's in  
24 the presence of his son.

25 Now, let me just tell you about that

1 for one sec. He has a child with Ms. Lee. He has  
2 a child with Ms. McCravy. The child with Ms. Lee I  
3 believe is five or six years old. It is a  
4 daughter. And Tucker is -- was born about, like I  
5 said, three to four years ago. For some  
6 unexplained reason when he was on probation  
7 supervision in Lexington County, he was allowed to  
8 live with Lucy McCravy and his child Tucker. When  
9 the probation was transferred to Richland County,  
10 he was no longer allowed to live with his child  
11 because the probation office took the position that  
12 under their rules he could not be in the presence  
13 of any child, his own son.

14 Now, there has never been an allegation  
15 at any time in this history that Mr. Gavin was a  
16 danger or a threat to his children. The same  
17 applies to the child Kaley (sic) that Ms. Lee got  
18 up here and talked to you about. There's never  
19 been any allegation that he is in any way molested  
20 or touched or in any way is a threat of harm to  
21 Kaley. As a matter of fact, as Mr. Taylor pointed  
22 out to you, in 2005 there was a consent order for  
23 visitation signed by Ms. Lee and approved by the  
24 Court and Mr. Gavin.

25 In fact, when he was arrested on one of

1 the subject charges, the bond order was modified so  
2 as to allow him to be with his children -- to see  
3 his children. But Richland County probation for  
4 one reason or another, which I still do not  
5 understand, has not let him see his son or his  
6 daughter in over two and a half years. He is not  
7 allowed to have any contact with them, despite the  
8 fact that there's nothing in the family court that  
9 says that he cannot, and there's nothing obviously  
10 by Tucker because Mr. -- Mrs. McCravy and Zail  
11 would certainly like to live together and did in  
12 Lexington County, but all of the sudden they  
13 decided he could not do that.

14 The other thing that was going in this  
15 case, which I find very disturbing, is he had this  
16 1999 arrest in Greenwood County, and obviously  
17 these people are very upset, as they should be, and  
18 they have a right to be upset about what happened  
19 back in 1999. But I can frankly tell you it is my  
20 understanding that they are not victims in this  
21 case anymore. It is my understanding that  
22 probation was terminated back in 2007. Now, I can  
23 be wrong, but it's not my understanding he's on  
24 supervision for that offense any longer. I believe  
25 that that was terminated.

1                   That matter was never brought up at all  
2   about him being -- well, what was brought up was  
3   the fact that he was no longer allowed to go to  
4   Greenwood County, but Ms. Sirmon from the probation  
5   office never mentioned the fact about these folks.  
6   They were not at the hearing. I don't know that  
7   they were ever asked to come to the hearing.

8                   I have the probation violation report  
9   which lists three offenses that he's on -- on  
10   supervision for, under three indecent exposures  
11   that were handled by Mr. Moore. Not -- not the  
12   ones that I have.

13                  So what you had from the May 27th  
14   hearing is that his -- he was restricted further in  
15   his hours that he was out of the house. Prior to  
16   that I believe he had been out -- allowed out 12  
17   hours a day, six days a week to do his paint  
18   contracting business, which at one time was a very  
19   lucrative business. As a result of changes in the  
20   order of his supervision from May 27th, he was only  
21   allowed out of the house from 8:00 to 3:00, and he  
22   had to be in the home on Saturday and Sunday. That  
23   was changed.

24                  It was also changed about his going  
25   back to Greenwood County. His parents live in

1 Greenwood County. His father I believe is 88 years  
2 old. His mother is in her eighties. They are  
3 elderly and they are infirm. That's his support  
4 mechanism to go back there and see them. I don't  
5 know of anything that would prohibit him from going  
6 back there because that supervision is over as far  
7 as I understand it.

8               So after the May 27th hearing, what the  
9 probation office did is they continued to not let  
10 him see his son, continued not to let him see his  
11 daughter, continued to reduce the amount of hours  
12 he was allowed out of the house from 8:00 to  
13 3:00 -- to 8:00 to 3:00 and have to be in on  
14 Saturday and Sunday, and other restrictions as well  
15 that are laid out in my affidavit.

16              So when we were coming into court on  
17 February 2nd, I came in there with the idea of  
18 asking the judge to modify his probation because  
19 what they had done is they had completely isolated  
20 this individual from his support mechanism. He  
21 couldn't see his parents. He couldn't be with his  
22 wife. He couldn't be -- see his son even under  
23 supervised condition, and he couldn't see his  
24 daughter even under supervised conditions. I  
25 didn't think that was fair.

1 I also thought that what they were  
2 doing -- and, again, with these violations of GPS  
3 monitoring, one was on July -- July 23rd was the  
4 incident that I just referred to. There was a GPS  
5 monitoring violation on October 16th from 9:56 to  
6 10:26, a 30 minute period. On November 4th there  
7 was a violation he was off monitor from 8:21 to  
8 8:48, and then on -- and that evening I believe he  
9 was off monitor for 19 minutes. Those are the  
10 serious violations that were before Judge Goode on  
11 February 2nd.

12 So what I'd like to also inform you is  
13 that Ms. Lee, who is here, has a very acrimonious  
14 relationship with my client. They originally  
15 agreed to have the visitation. That was a court  
16 order, which you may have. There has since been  
17 acrimony develop between the two. She has appeared  
18 at the probation hearings. Ladies and gentlemen,  
19 she's not a victim in this case. She has no  
20 standing in this case. She comes to the hearings  
21 and she also has incited some of the other people  
22 to come to the hearings, but she has no position  
23 here. She has no position in the court. And when  
24 she -- her lawyer got up to try and talk to the  
25 judge, I objected, rightfully so I believe, because

1 they're just injecting themselves in the process  
2 when she is not -- has nothing to do with the  
3 probation situation whatsoever.

4 Now -- so on February 2nd we had  
5 this -- we had a hearing in front of Judge Goode,  
6 and I made a very strong argument, number one, that  
7 you will read from the record that I was extremely  
8 annoyed with Ms. Sirmon. I had a murder case  
9 starting on Monday morning. On Friday afternoon I  
10 had worked out a plea and my client was going to  
11 get a reduced sentence and he was going to testify  
12 against another defendant that was going to go to  
13 trial. That plea had to be taken first thing  
14 Monday morning before jury selection.

15 I knew that was going to happen, so on  
16 Wednesday evening or Thursday morning -- I can't be  
17 quite sure -- I called Ms. Sirmon, left a message  
18 on her voice mail, called her again and left a  
19 message on her voice mail, and did not hear back  
20 from her because I wanted to tell her that I could  
21 not be in Fairfield County at nine o'clock in the  
22 morning. Couldn't be in both places, and obviously  
23 the murder case, picking the jury and taking a plea  
24 obviously prevailed over that.

25 On Friday afternoon I faxed her a



1 letter to tell her the same thing. On Monday  
2 morning as I was getting up to go to court, I got a  
3 call from Mr. Gavin who was told that he better be  
4 in Winnsboro at nine o'clock, and if he wasn't,  
5 they may revoke his probation. It didn't make any  
6 difference where I was. Well, when I found out  
7 about that, I called the probation office and  
8 finally got in touch with the supervisor who told  
9 me there's no way to know whether or not Ms. Sirmon  
10 got my messages. There's no way to know whether  
11 Ms. Sirmon got my letter, and I told her I didn't  
12 believe that.

13               The first thing that I asked when we  
14 got on the record on Monday morning when I finally  
15 did get up there is "Did you get my messages?"

16               "Yes."

17               "Did you call back?"

18               "No."

19               "Did you get the letter?"

20               "Yes, I picked it up Sunday."

21               So Ms. Sirmon knew that I was not going  
22 to be there Monday morning, that I had called, I  
23 was trying to reschedule the matter for sometime  
24 later in the week or even later in the day, but  
25 instead she was up there. She had some folks here,

1 Ms. Lee was up there, some other people that they  
2 had brought together there. They sat there from  
3 9:00 to 1:00 until I got there, and I was hot when  
4 I walked in that courtroom, I can tell you.

5 I apologized to the judge and I  
6 apologized to all the people who were on the  
7 victim's side, tell them that I tried to get in  
8 touch. So you could see there was a little bit of  
9 anger on my part in that transcript. I think it  
10 comes out very well.

11 The other thing that I was angry about  
12 was that we had -- there was an expunged order.  
13 Everybody here knows what expunged means. There's  
14 no record of it. You can can't bring it up. She  
15 brought it up at the probation hearing. It was  
16 still in the report. You can have this report. As  
17 a matter of fact, I wrote over that issue. I wrote  
18 down expunged.

19 She has on the probation report, which  
20 was done on December 11th -- so she can't claim she  
21 didn't have knowledge of the case was over with.  
22 She has on this probation violation report on the  
23 third page with respect to the three charges that I  
24 had "Indecent exposure times three 7/23/08, not  
25 guilty."

1                   So that was the issue, and Judge Goode,  
2   when he asked her about that -- and he was upset  
3   about it too. "You know that you're not supposed  
4   to bring up an expunged record. It's in your --  
5   it's in the statutes that y'all have passed."

6                   So that's what started off the hearing.  
7   And I made my presentation. I argued that the GPS  
8   monitoring I thought were again minor violations  
9   when there's no other evidence that someone has  
10  violated the law, that people do forget their  
11  monitoring, and you have to make allowances for  
12  that.

13                  And I also believe -- and I told them  
14  in that hearing that day -- that you can't set  
15  someone up to fail. You can't take away the  
16  ability to live with their wife, the ability to see  
17  their son, the ability to see their daughter, the  
18  ability to see their parents, the ability to make a  
19  living and expect them to survive.

20                  Now, Judge Goode kept jurisdiction of  
21  this case because I believe that what he was trying  
22  to do was get this guy in the right path. I have  
23  seen cases before where judges have retained  
24  jurisdiction in cases. I won't say it's the rule,  
25  but I will say that there are solicitors who have

1 asked for it and there are defense lawyers who have  
2 asked for it for a judge to retain jurisdiction.

3 And that man cares more about many of  
4 the people that come before him than a lot of other  
5 people. And I'm not talking about judges, but this  
6 man takes a personal interest in many cases in the  
7 rehabilitation efforts of people.

8 We have a great judiciary. One of the  
9 reasons we have a great judiciary is because of the  
10 method I believe of the way you take -- you elect  
11 judges. I've been out of this state. I've gone to  
12 other courts. I've seen judges. We have the best.  
13 We also when I have lawyers come in from other  
14 jurisdictions tell me that we have the best.  
15 They've never seen the judges in the type of  
16 procedures we have. That's to your benefit because  
17 that's the way we're elected.

18 SENATOR FORD: You know you're picking  
19 on me.

20 MR. SWERLING: No, I'm not picking at  
21 you, Senator. I don't know what your position is  
22 on that, but I can tell you what, I believe the  
23 method that we use in South Carolina is one of the  
24 finest methods in the country because we get the  
25 best of the best, and he's one of the best.

1 CHAIRMAN McCONNELL: Any questions?

2 The senator from Lexington.

3 SENATOR KNOTTS: Thank you.

4 CHAIRMAN McCONNELL: Senator, before

5 I -- I need to stop. We need to get some paperwork

6 real quick done.

7 MS. SHULER: Mr. Swerling, I'd like to

8 have a copy made of that transcript --

9 MR. SWERLING: Yes.

10 MS. SHULER: -- and offered as an

11 exhibit in the record, and then while we're doing

12 that we might take a five minute break and then

13 I --

14 MR. SWERLING: I have several documents

15 I can give you. This is -- would you like the

16 probation report as well?

17 MS. SHULER: I have the probation

18 report. I was going to offer that, only it's

19 redacted with the expunged.

20 MR. SWERLING: They did --

21 MS. SHULER: They did. They gave it to

22 me expunged.

23 MR. SWERLING: Well, I'm glad that

24 finally got done.

25 CHAIRMAN McCONNELL: We need a

1 technical adjustment again, so we'll --

2 MS. SHULER: And then I want to mark  
3 your affidavit.

4 CHAIRMAN McCONNELL: -- stand in recess  
5 for about five minutes before the next call.

6 (A recess transpired.)

7 CHAIRMAN McCONNELL: All right. We'll  
8 go back on the record at this point.

9 And, Ms. Shuler.

10 MS. SHULER: Yes, sir. Mr. Swerling, I  
11 have several documents that I would like for you to  
12 review and I'd like to offer as exhibits to the  
13 record. The first item is the transcript of record  
14 in State versus Zail Gavin, May 27, 2008, which you  
15 brought to the hearing today. I'd like to have a  
16 copy, once you've identified it, offered.

17 MR. SWERLING: It is -- I can't --  
18 frankly I can't tell you how I got it or where I  
19 got it from, but it is a certified transcript.

20 MS. SHULER: All right. I'd like to  
21 offer that transcript as an exhibit into the  
22 record.

23 CHAIRMAN McCONNELL: All right. Is  
24 there objection? There being none, so ordered.

25 (EXH. 16, Transcript of Record for

1 State vs. Zail Gavin Dated May 27, 2008, marked for  
2 identification.)

3 MS. SHULER: Mr. Swerling, you also  
4 referred to the fact that you had obtained an  
5 expungement on a sex/indecent exposure two charges  
6 on 9/19/2008 --

7 MR. SWERLING: That's correct.

8 MS. SHULER: -- and provided us with an  
9 order.

10 MR. SWERLING: I think it's -- is it  
11 three? I think it's three.

12 MS. SHULER: I see two, sex/indecent  
13 exposures.

14 MR. SWERLING: It's -- it's my -- my  
15 paralegal's handwriting. It's warrants number 1993  
16 through 1995.

17 MS. SHULER: Okay.

18 MR. SWERLING: So it's -- it would be  
19 four warrants -- or three warrants, 93, 94 and 95.

20 MS. SHULER: Oh. I see.

21 MR. SWERLING: She just -- the way she  
22 has it written I can see where you only think it's  
23 two.

24 MS. SHULER: I'd like to offer that as  
25 an exhibit.

1 MR. SWERLING: This is correct.

2 CHAIRMAN McCONNELL: All right. Is  
3 there objection? There being none, then so at this  
4 point in the transcript.

5 (EXH. 17, Expungement for State Vs.  
6 Zail Gavin, marked for identification.)

7 MR. SWERLING: That bears the stamp of  
8 the clerk of court as well.

9 MS. SHULER: Thank you. True copy.  
10 You also provided us with the probation  
11 report on Zail Gavin. And I am using your copy  
12 that you provided rather than the one I received  
13 from probation because you have marked through the  
14 expunged -- you have added the words dismissed,  
15 slash, expunged?

16 MR. SWERLING: Yes. If I can just  
17 explain. On December 11th when this case was first  
18 scheduled, this was given to me in court. The one  
19 that I have is dated December 11th, and I remember  
20 writing through it and saying expunged on it so  
21 that we would know that that was -- just should not  
22 be an issue.

23 MS. SHULER: So that was the report  
24 that you received in December?

25 MR. SWERLING: This was the one I got



1 in December --

2 MS. SHULER: Right.

3 MR. SWERLING: -- where -- and it was  
4 continued.

5 MS. SHULER: Right. I'd like to offer  
6 that as an exhibit for the record.

7 CHAIRMAN McCONNELL: Is there any  
8 objection? There being none, so ordered.

9 (EXH. 18, Violation Report for State  
10 vs. Zail Gavin, marked for identification.)

11 MS. SHULER: Finally, you offered an  
12 affidavit --

13 MR. SWERLING: Yes.

14 MS. SHULER: -- and -- regarding the  
15 Zail Gavin matter. Is that your affidavit that you  
16 have provided to the Commission?

17 MR. SWERLING: Yes.

18 CHAIRMAN McCONNELL: Staff made those  
19 available to you.

20 MS. SHULER: I'd like to offer your  
21 affidavit as part of the record.

22 CHAIRMAN McCONNELL: All right. Is  
23 there objection to his affidavit being placed into  
24 the record? There being none, it will be done.

25 (EXH. 19, Affidavit of Jack B.

1 Swerling, marked for identification.)

2 MS. SHULER: Mr. Swerling --

3 MR. SWERLING: Yes.

4 MS. SHULER: -- before we stopped for  
5 the break, you were discussing the February 2nd  
6 probation revocation --

7 MR. SWERLING: Correct.

8 MS. SHULER: -- hearing. Had you  
9 covered everything you wanted to be made aware?

10 MR. SWERLING: There were just a couple  
11 more observations I wanted to make.

12 One of the -- one of the reasons that  
13 Judge Goode I think -- and it was obviously what I  
14 had raised, was that probation officer really  
15 violated his order of May 27, 2008, when he told  
16 them "I'm retaining jurisdiction. You bring any  
17 other further modifications before me." You'll  
18 find in the transcript that you have -- I don't --  
19 you probably have the same one I have from the  
20 February 2nd. And it's not -- it's an unedited  
21 version.

22 MS. SHULER: Right.

23 MR. SWERLING: On page 16, I raised  
24 this issue with the Court, and the judge said to  
25 Ms. -- and this is -- this is the acrimonious

1 exchange they're talking about.

2 "Do you feel that you have the  
3 authority, Ms. Sirmon, that you could modify what I  
4 ordered?" And the probation agent says, "No, Your  
5 Honor. At this time I was not there back in May,  
6 and this is the first time I have seen word for  
7 word what you had said that day in court. So Your  
8 Honor -- Your Honor, I do not feel that I can  
9 overturn that."

10 So Judge Goode's order of May 27th was  
11 ignored by the probation office, and the probation  
12 office said they -- she wasn't aware of it, yet it  
13 was her office.

14 The other thing that I wanted to bring  
15 up -- and we raised this in the hearing, and you'll  
16 see it in the hearing transcript. Another thing  
17 that I thought the Court needed to hear is you've  
18 heard testimony from Mr. Taylor that one of the  
19 things that the psychiatrist had said was that  
20 Mr. Gavin's activities are spurred by substance  
21 abuse or alcohol abuse.

22 In early October, I received a call  
23 from Mr. Gavin who was crying out, saying, "I'm  
24 just -- I'm losing it. I think I'm failing. I  
25 really feel like I want to go out and get some

1 drugs." Well, that obviously sent an alarm, and  
2 the next morning -- I just told him to hold on.  
3 The next morning -- I believe it was the next  
4 morning -- I prepared an order, along with Greg  
5 Harris, to -- let me give you -- I think it was the  
6 next day because what he had done at some point is  
7 got into the Fellowship Hall.

8 I have a letter from Fellowship Hall  
9 saying that he was allow -- going to be allowed to  
10 report -- well, I don't want to stop this, but like  
11 I said, it could be a day or two, but he got --  
12 Fellowship Hall is in North Carolina. It's a  
13 substance abuse center. He was going to go into  
14 Fellowship Hall at his own expense.

15 And we had an order that we were going  
16 to present to Judge Goode to see if we could  
17 suspend the electronic monitoring for a period of  
18 60 days because they estimated the treatment would  
19 take four weeks, I believe. And just -- I would  
20 like you to have this letter. I just don't want to  
21 have to look for it right now.

22 I called Ms. Sirmon and I said, "Look,  
23 we've got a guy that's crying out. Can we go ahead  
24 and get him some sub -- at his own expense go to  
25 North Carolina and suspend his monitoring period

1 for 60 days?" She said -- and I understand. She  
2 said, "We cannot do that because he's on GPS  
3 monitoring. He'll have to do it here in South  
4 Carolina." She said, "I will go ahead and -- and  
5 get it started in getting it arranged."

6 It is now February 19th, 2009. He has  
7 still not gone into a rehab center. Now, again, I  
8 cannot explain that. I don't know why. It's just  
9 like the situation of not being able to see -- have  
10 supervised visitation with his children. I hear  
11 different things, either about the sex abuse  
12 counseling or one thing or another. The bottom  
13 line is he's not been allowed to do these things.

14 And that's what Judge Goode had before  
15 him that day. And I believe that Judge Goode did  
16 the right thing that day. It may be a -- it may  
17 not be a popular thing. It may not be what  
18 everybody agrees, but he has to make the tough  
19 decisions. And one of the reasons why I never have  
20 offered myself for election as a circuit judge is I  
21 don't want to have to make those decisions. I  
22 think it's tough.

23 And my personality is such that I would  
24 probably worry about every case I ever decided  
25 whether it was too strong or too lenient a

1 decision, and it's just something I just don't --  
2 can't do, but I respect the people that have to  
3 make that decision in 30 minutes when the lawyers  
4 have worked on them for hundreds of hours and  
5 made -- prepared their cases and the judge gets 30  
6 minutes to decide what the sentence should be. So  
7 it's a very difficult -- very difficult position.

8 I don't agree when Judge Goode went  
9 ahead and changed it back on February 9th. I'll  
10 state to the Commission that I didn't agree with  
11 that. I don't agree with everything Judge Goode  
12 does. I've had clients -- not every one of my  
13 clients has got a good past or gotten probation.  
14 He has put some of my clients in prison, but that's  
15 the decisions he has to make, and that's what we  
16 have before us today.

17 MS. SHULER: I'd like to offer the  
18 Fellowship later -- letter as a supplement to the  
19 record when he's able to find it and make a copy.

20 MR. SWERLING: That -- Ms. Shuler, I  
21 can also provide you with a copy of the prepared  
22 order that we did in the beginning of October if  
23 you'd like as well.

24 CHAIRMAN McCONNELL: Is there any  
25 objection to that? There being none, then it will

1 be so ordered.

2 MR. SWERLING: The letter is dated  
3 October 3rd, and he was going to -- allowed to go  
4 in October 7th.

5 SENATOR FORD: This is in North  
6 Carolina?

7 MR. SWERLING: Yes, it was in North  
8 Carolina, and, again, it was going to be at his  
9 expense. Fortunately he's held on.

10 Here is a copy of the order too. Now,  
11 this was never executed, so -- and I do understand  
12 why she would not let him go to North Carolina  
13 because of the GPS monitoring. I'm not criticizing  
14 that decision. What I think should have happened  
15 is get him into a South Carolina facility right  
16 away.

17 MS. SHULER: Mr. Swerling, I'd like to  
18 turn to one other matter. In your 36 years -- am I  
19 correct on the number of years?

20 MR. SWERLING: Yes, unfortunately.

21 MS. SHULER: -- of practicing criminal  
22 law you've had significant experience in that area;  
23 is that correct?

24 MR. SWERLING: Yeah. My practice has  
25 been primarily devoted to criminal cases, state and

1 federal court, probably the last 25 years.

2 MS. SHULER: Could you just in your  
3 experience in dealing with criminal cases in trying  
4 those cases and plea sentences explain to the  
5 jurisdiction (sic) any -- what the standard  
6 procedure is when the -- when you file a motion to  
7 reconsider sentence.

8 MR. SWERLING: Okay. Well, motion  
9 practice is a little unusual, especially in  
10 criminal court. There is a rule that after a  
11 verdict you have ten days in which to file your  
12 motions -- posttrial motions. When you file those  
13 motions, that stops everything. Nothing is  
14 running. The clock is not running at that point  
15 until your motions are filed and then they're  
16 heard.

17 So I've had situations -- I'm not going  
18 to say a lot, but I've had situations where the  
19 time to appeal has not started running for a few  
20 months until that hearing is heard on the motions  
21 for a new trial. So -- but the important factor  
22 there is -- and for the civil lawyers, in criminal  
23 cases the notice of intent to file must be filed in  
24 ten days, not 30 days which I believe it is in  
25 civil court, so we're under a much stricter time



1 frame and so that ten days is critical to get those  
2 motions in.

3 Sometimes if it's a very complicated  
4 case, I will file -- I'll ask the Court to allow me  
5 to file the motion and I'll file it within the ten  
6 day period, but I immediately make the motion for  
7 new trial. If it's -- if it's something simple,  
8 I'll make the motion for new trial right then and  
9 there and just get -- the ten days starts running  
10 at that point.

11 With motions to reconsider, I have  
12 filed them myself. It is not -- I would say it is  
13 not extraordinary -- out of the ordinary for a  
14 motion to reconsider to be filed either by the  
15 prosecution or the defense. It is not the general  
16 rule -- I mean, we don't see these often, but every  
17 once in a while the prosecution or the defense  
18 feels there's a reason for the judge to revisit the  
19 ruling that he made in the sentencing. So it is --  
20 it is a perfectly legitimate matter.

21 And in this particular case -- and it's  
22 a little confusing -- and actually I'm on the rules  
23 committee right now. But this motion has to be  
24 filed under the -- under the old -- it is my  
25 understanding under the old circuit court rules, it

1 has to be filed by the end of the term of court  
2 when the court adjourns sine die on Friday of that  
3 week. So a motion to reconsider is not under that  
4 ten day rule, if I recall correctly, but it has to  
5 be filed by the end of the term of court.

6 As I understand in that particular  
7 case, that motion was filed within a couple of days  
8 after the sentencing. Again, what that effectively  
9 does is stop it. It stops all proceedings.  
10 There's no clock ticking on that. There's no  
11 motion -- there's no appeal to be filed at that  
12 point until the judge rules on that -- that motion  
13 for reconsideration.

14 Now, I've heard interchangeably the  
15 words motion for reconsideration, motion for  
16 sentencing, or resentencing. The fact of the  
17 matter, I think we're all talking about the same  
18 thing; we're just talking about it in different  
19 terms. I mean, that's what it really comes down  
20 to, and I think they're terms of art. I think you  
21 could probably have people disagree about it. But  
22 when I was sitting here listening to it, I  
23 perfect -- I understood perfectly what everybody  
24 was saying.

25 The fact of the matter is that it is a

1 motion to reconsider a sentence. So you can see  
2 how that can be confused whether it's a motion to  
3 reconsider or it's a sentencing procedure. But the  
4 fact of the matter is, as Senator Knotts has  
5 pointed out, once that's heard, there is a decision  
6 made on the motion. It's either denied or it's  
7 reduced or increased in some way.

8           It is my understanding -- and, again,  
9 I'm not -- I'm not in the clerk of court's office,  
10 but I believe that there has to be something  
11 entered on the sentencing sheet to indicate that  
12 that matter was heard and what the date was because  
13 the time doesn't start running until that day. So  
14 there has to be a record of it somewhere. But it's  
15 not something that there is an order issued  
16 granting a motion to rehear. It -- it is  
17 automatic. When you file it, the judge will rehear  
18 it. I've never seen a judge deny the hearing on a  
19 motion to reconsider. He may deny the relief, but  
20 he doesn't deny the hearing on the motion.

21           Now, as I pointed out in this  
22 particular case, this was Richland County in  
23 December. I don't know when Judge Goode is going  
24 to be back in Columbia, but it's not un -- it's not  
25 unusual for a judge to wait till he comes back to

1 the circuit to go ahead and hear those motions. In  
2 our particular case, as I pointed out before, the  
3 reason we went to Winnsboro is because both parties  
4 consented and because we wanted the probation  
5 hearing dealt with because I think the probation  
6 office said the reason he couldn't get into a rehab  
7 center in South Carolina is because the probation  
8 violations were outstanding. So we wanted to go  
9 ahead and expedite that and we consented to a venue  
10 change.

11 So it's filed. It's called a motion to  
12 reconsider. I can see where somebody could say its  
13 a motion to reconsider sentencing or a sentencing  
14 issue, but the fact -- the bottom line is I think  
15 it's all the same and I think it's just a question  
16 of semantics and what people different call it.

17 You know, it was a long day. People  
18 are asking a lot of questions. I think people get  
19 fatigued. Ms. Fent is an honorable person. Jerry  
20 Finney is an honorable person. I trained them. He  
21 was one of my law clerks. Judge Goode is an  
22 honorable person. The fact that there may be some  
23 dispute as to what they're saying doesn't mean that  
24 anybody is doing anything wrong or saying anything  
25 wrong. It could be as a matter of semantics in

1     what people recall from a particular occasion.

2                     And I think that's just the -- one of  
3     the things that I'd like to point out is that I  
4     think at the end of the day it looked like Judge  
5     Goode was getting a little fatigued, and so I think  
6     if we're getting into those kinds of semantics, I'd  
7     just like to explain that those things are all  
8     called different things, but you can -- I can  
9     easily see how someone can say when you're filing a  
10    motion to reconsider that it's a motion to  
11    reconsider sentencing or it's a sentencing issue.

12                    I don't think that Judge Goode, from  
13    what I heard, ever committed or -- or intended to  
14    say that he committed to resentencing the  
15    individual, that he was going to go ahead and  
16    increase the sentencing. I think it's like Senator  
17    Knotts pointed out, he was going to consider  
18    whether or not he was going to leave it to the same  
19    or increase it, and the next time -- the  
20    appropriate time to do it, unless parties agreed  
21    otherwise, is when he came back into Richland  
22    County.

23                    MS. SHULER: Just to clarify, when a  
24    motion -- when you file a motion to reconsider, you  
25    don't -- you would not accompany it with an order?

1                   MR. SWERLING: No, I wouldn't -- now,  
2   again -- again, we're dealing again with words and  
3   semantics what's going on in court. Some of you  
4   have been in plea court when there's pleas going  
5   on. It's mass confusion. You know, there's dozens  
6   of people sitting there wait -- waiting to get  
7   plea. There's a lot of people working, a lot of  
8   clerks. So, I mean, there's a lot of confusion  
9   going on. The judge is on the bench. There are  
10   people walking all around. I mean, it is a  
11   confusing situation when you have a plea week. So  
12   obviously that's what I heard. There were people  
13   doing pleas that week.

14                   But there is no order necessarily  
15   granting a motion to reconsider. The motion pretty  
16   much stops the clock, and the judge is going to  
17   hear it. Now, he say may, "I'll hear it later.  
18   I'll hear it when I come back. I may hear it by  
19   the end of the week," and that would be -- I guess  
20   you could consider that an order, but I don't know  
21   that you actually have -- and I think there's been  
22   some confusion here -- that there's an order to  
23   reconsider.

24                   The actual motion is the filing of the  
25   motion to reconsider, and then the hearing is held

1 and an order is issued from that. And I've had  
2 them go out several months.

3 MS. SHULER: That's all I have,  
4 Mr. Swerling.

5 CHAIRMAN McCONNELL: Anybody have any  
6 questions?

7 The senator from Lexington.

8 SENATOR KNOTTS: Mr. Swerling, you've,  
9 like I said, been in law practice, criminal law --  
10 I know when you came out of Clemson. And --

11 MR. SWERLING: You do.

12 SENATOR KNOTTS: -- you're pretty good  
13 at what you do.

14 Let me ask you about this GPS  
15 monitoring. He had the two-piece monitoring?

16 MR. SWERLING: He had -- he had the  
17 two-piece at one time. I think there was -- he had  
18 several different monitors actually. They tried  
19 several different ones because, as you know,  
20 there's -- sometimes there's problems with them, so  
21 they go ahead and they switch them out. They  
22 change them. Sometimes the batteries are not  
23 working. I mean, they're still working on this  
24 kind of system. It's a very sophisticated system.

25 SENATOR KNOTTS: Not been plugged in

1 or --

2 MR. SWERLING: Right.

3 SENATOR KNOTTS: -- battery goes  
4 dead or whatever, but usually -- are you aware that  
5 the probation parole office has two separate types  
6 of --

7 MR. SWERLING: Yes. There's a single  
8 unit one and there's a two-piece.

9 SENATOR KNOTTS: The single unit is an  
10 ankle bracelet.

11 MR. SWERLING: That's correct.

12 SENATOR KNOTTS: That actually is put  
13 on the person, and it does not have a second  
14 unit --

15 MR. SWERLING: Right.

16 SENATOR KNOTTS: -- that you can --  
17 that you got to tote around or you forget to leave  
18 here or forget to leave -- leave there.

19 MR. SWERLING: That's correct.

20 SENATOR KNOTTS: Was your client ever  
21 put on one of those?

22 MR. SWERLING: Senator, I don't -- I'd  
23 have to look back in the transcript and see whether  
24 or not it was a two-piece unit or a one-piece unit.  
25 I apologize. I don't know. I probably do know



1 from my file, but I'd have to go into the file and  
2 take a look.

3 It appears that most -- some of -- the  
4 ones that were -- the monitor he had in the  
5 probation violation I represented him for in  
6 February 2nd, it appears it was a two-piece monitor  
7 because he was off the monitor for 19 minutes, 20  
8 minutes, 15 minutes. So I -- I would suspect that  
9 that was a two-piece unit.

10 SENATOR KNOTTS: When I -- when I heard  
11 that, I immediately related to that because that  
12 would appear to be a two-piece monitor --

13 MR. SWERLING: Yes.

14 SENATOR KNOTTS: -- because the actual  
15 monitor is on the piece that you -- you tote  
16 around, not the piece that's on you. On a  
17 one-piece you can't take it off, you can't tamper  
18 with it, and it monitors you everywhere you go.

19 MR. SWERLING: That's correct.

20 SENATOR KNOTTS: And it monitors you if  
21 you're in a place you're not supposed to be, and  
22 you can program it to say you can't go around a  
23 school, can't go around a day care center, can't go  
24 around your victim, and it also notifies the  
25 victim -- a lot of them --

1 MR. SWERLING: Yes.

2 SENATOR KNOTTS: -- can program to  
3 notify the victim if you come within their  
4 circumference zone.

5 MR. SWERLING: It's a pretty  
6 sophisticated instrument.

7 SENATOR KNOTTS: That's the -- that's  
8 the one-piece ankle bracelet. It seems to me that  
9 the one that he had from testimony here was the  
10 two-piece where he left it in the house and was  
11 gone for a period of time and came back, which it  
12 notifies that the agent -- notifies the agent that  
13 the subject is gone, but the monitor -- and left  
14 the monitor.

15 So I was just wondering if -- which one  
16 he had. It appeared to me if he was under the  
17 highest supervision, maybe the probation office  
18 should have him on a -- the one-piece.

19 MR. SWERLING: One-piece. And I  
20 know -- like I said, I know there's different --  
21 very expensive for you to have these. It's like  
22 \$80 a week now to run these GPS monitoring systems.  
23 And I have a number of clients who are on them,  
24 whether they're on bond or they're in the sentence.  
25 And I don't -- frankly I just want the Commission

1 to know, I have no problem with GPS monitoring. I  
2 think it's an essential element in the treatment of  
3 offenders.

4 But I just think that when you -- when  
5 you put somebody on probation, you can't have a  
6 cookie cutter probation. You have to individualize  
7 the treatment. In this particular case, as I  
8 pointed out, there's some things that Mr. Gavin was  
9 just set up for failure. He didn't have any  
10 support mechanism.

11 SENATOR KNOTTS: Well, I had two of  
12 those monitors that -- whenever they came here to  
13 the Gressette Building a couple years ago and  
14 demonstrated them to myself and the -- the senator  
15 from Charleston, Senator Ford. It demonstrated in  
16 this building here with it on a person each office  
17 that he went into, how long he stayed and  
18 everything. So it's a real good, sophisticated  
19 system. And I thought --

20 MR. SWERLING: It is tracking -- it is  
21 tracking you. And there's not -- as I said,  
22 there's no evidence that I'm aware of that any of  
23 these probation violation reports on the GPS  
24 monitoring that he went out and did something  
25 wrong, that he went out and came near a victim or

1 committed any kind of violation. They were  
2 off-monitor situations.

3 SENATOR FORD: Chairman, one quick  
4 comment.

5 CHAIRMAN McCONNELL: Yes, sir, Senator.

6 SENATOR FORD: We tried -- Senator  
7 Knotts and I introduced a bill about six years ago,  
8 because the GPS is basically out of style now.  
9 What we use now is satellites, the one-piece. And  
10 satellites is almost foolproof. You can't do  
11 nothing with it once we put it on you.

12 But every time we pass the bill in the  
13 Senate, we send it to Mr. Laney committee in the --  
14 in the judiciary -- House judiciary, and so maybe  
15 they might have got some enlightenment here today  
16 because there's three or four things we tried to do  
17 that they keep rejecting from the Senate.

18 But one question.

19 MR. SWERLING: Yes.

20 SENATOR FORD: Are you court appointed  
21 in this case?

22 MR. SWERLING: No. I do accept court  
23 appointments even though I'm exempt. But I still  
24 do that. I still do pro bono work.

25 SENATOR FORD: Somebody told me you was

1     \$2,000 an hour.

2                   MR. SWERLING:   That cheap?

3                   SENATOR FORD:   And you've been --  
4     you've been here nine hours.

5                   MR. SWERLING:   My reputation has gone  
6     down.   I feel like Gedney Howe.

7                   SENATOR FORD:   That's what I'm saying.  
8     I can -- I can imagine because they call you Gedney  
9     Howe Columbia, and I know Gedney would never take a  
10    case like this.

11                  MR. SWERLING:   No.   Gedney criticizes  
12    me for my charges enough.   We went to law school  
13    together, so --

14                  SENATOR FORD:   Both -- both of y'all  
15    trained by Professor -- Professor Freeman.

16                  MR. SWERLING:   Well, I learn -- he was  
17    not there at the time, but I've learned everything  
18    I know about ethics from Professor -- Professor  
19    Freeman since that time.   I call on him frequently,  
20    as do all the lawyers.

21                  SENATOR FORD:   He's a good one.

22                  MR. SWERLING:   He's the best.

23                  SENATOR FORD:   He can't really fight,  
24    but he's still the best.

25                  MR. SWERLING:   Well, he's a good

1 fighter now. He's yelled at me a few times too,  
2 so...

3 CHAIRMAN McCONNELL: All right. Is  
4 there any other questions? Anything else?

5 Thank you, sir.

6 MR. SWERLING: Senator, can I make one  
7 comment? This Greenwood issue, I want the  
8 Commission to know I cannot represent -- I'm not  
9 going to represent that that was not included still  
10 in his probation. What I would like you all to  
11 understand is that it was my understanding that  
12 that -- that supervision had been terminated some  
13 time ago, and so that's on information and belief.  
14 And I just want you to know that.

15 CHAIRMAN McCONNELL: Thank you.

16 MR. SWERLING: I think I said that  
17 before, but I wanted to make sure. Thank you.

18 (EXH. 20, Order for State vs. Zail  
19 Gavin, marked for identification.)

20 (EXH. 21, October 3, 2008, Letter to  
21 Mr. Jack Swirling From Connye M. Post, marked for  
22 identification.)

23 CHAIRMAN McCONNELL: Ms. Shuler, what's  
24 next?

25 MS. SHULER: Ms. Crocker would like to

1 be sworn in and just respond to --

2 CHAIRMAN McCONNELL: You have already  
3 been sworn in today?

4 MRS. CROCKER: (Shakes head.)

5 CHAIRMAN McCONNELL: You -- you have  
6 not.

7 MRS. CROCKER: Uh-uh.

8 CHAIRMAN McCONNELL: Please raise your  
9 right hand. Do you swear to tell the truth, the  
10 whole truth, and nothing but the truth, so help you  
11 God?

12 MRS. CROCKER: I do.

13 CHAIRMAN McCONNELL: Thank you, ma'am.  
14 Please answer any questions or -- Ms. Shuler.

15 MS. SHULER: Ms. Crocker, you had some  
16 concerns regarding the testimony --

17 MRS. CROCKER: Yes.

18 MS. SHULER: -- pertaining to  
19 Mr. Gavin's Greenwood conviction.

20 MRS. CROCKER: First of all, it was not  
21 '99. It was 2001. Excuse me, this is hard for me.  
22 I have brought my girl. She was six years of age.  
23 And this man was 42 years old. It was the middle  
24 of January. He was standing in his underwear in  
25 her window. We caught him behind our swimming pool

1     that night about nine o'clock. He was charged  
2     with -- with Peeping Tom where he did -- he did his  
3     time. He was released early.

4                 My concerns are that his parents' home  
5     is a hundred yards from mine. We share a driveway,  
6     and it's his step-father. He -- he has been caught  
7     at primary schools watching children on  
8     playgrounds. He has a very, very long history  
9     of -- of sex offenses. I don't understand. Judge  
10    Goode knows his history, but they keep giving him  
11    chances. And I'm scared whether it be my family or  
12    someone else's that he's going to murder someone,  
13    and it all comes down to Megan's Law. Is that what  
14    it takes to get someone with a mind like his off of  
15    the streets?

16                I did have -- they claim we're no  
17    longer victims. Back in August, probation did give  
18    us pagers for the electronic monitoring. He was  
19    told not to be back at his parents' house because  
20    we lived so close. He had five violations. My  
21    daughter, who will soon be 15, has a hard time  
22    being at home alone when I'm at work for an hour  
23    and a half before I get home while she keeps our  
24    son because she's scared he's back there, what he  
25    might do.



1                   It is his step-father and his mother.  
2   His step-father has two grown sons, very nice guys.  
3   They'd do anything for him, for Mr. or Ms. Willner.  
4   They -- they're there every -- every morning at  
5   7:00 getting the paper. So for them to say that he  
6   needs to come help is not true. This really needs  
7   to be looked at. I know that his criminal history  
8   record is 23 pages long. There's no helping this  
9   man.

10                  Regardless, I understand my case is  
11   from 2001, but I don't want anybody else to go  
12   through torment like I've gone through worrying  
13   about my children getting home from school. I  
14   can't afford to be home with them, which I'm not a  
15   big woman. He can overpower me easily, but from  
16   the bottom of my heart I just ask for help on this  
17   and just please do something to get this man off  
18   the streets and -- and have Judge Goode or any  
19   other judge that hears cases on him to punish him  
20   like he should be. That's all I ask.

21                  CHAIRMAN McCONNELL: Are there any  
22   questions?

23                  Thank you, ma'am.

24                  MRS. CROCKER: Thank you.

25                  CHAIRMAN McCONNELL: We have some

1 remaining two witnesses and a few things to take  
2 up, but I need to go back and let Judge Goode  
3 respond to what's been put in the record to this  
4 point, and then I believe we've got his physician.

5 Yes, sir, what --

6 MR. SWERLING: Senator, I just want to  
7 clarify something --

8 CHAIRMAN McCONNELL: Sure.

9 MR. SWERLING: -- I can probably  
10 just -- so for the record. The court date on those  
11 charges in Greenwood was April 12th, 2001.  
12 Somewhere or another I got information that the  
13 offense took -- or the arrest was in '99. So if I  
14 misstated that, I apologize, but the conviction was  
15 on April 12th, 2001.

16 CHAIRMAN McCONNELL: 2001. Thank you,  
17 sir.

18 Yes, the senator from Charleston.

19 SENATOR FORD: Who was the judge in  
20 that case, Attorney?

21 MR. SWERLING: I think --

22 MR. TAYLOR: Hughston.

23 MRS. CROCKER: Hughston.

24 SENATOR FORD: So Judge Goode didn't  
25 have anything to do with that Greenwood case?

1 MR. TAYLOR: No, sir.

2 MR. SWERLING: No, sir.

3 MR. TAYLOR: Not a thing.

4 MR. SWERLING: And I do have -- I'd  
5 like to say, I didn't call them -- that they were  
6 weren't victims. I just said in this particular  
7 case. That's what I mean. I apologized and then  
8 said I understood how they felt.

9 CHAIRMAN McCONNELL: All right. Judge  
10 Goode, do you want to come up and respond at this  
11 particular point? I'll give you -- if there's  
12 anything you want to respond to, sir.

13 JUDGE GOODE: Yes, sir, I'll make this  
14 as -- as brief as possible.

15 First, as to Ms. Lee's comments about  
16 my having lunch with an attorney from Moore,  
17 Taylor & Thomas, and I wasn't sure that I followed  
18 her testimony. At first it seemed that someone  
19 else had heard us talking and then I thought it was  
20 that she had heard. But in any event, I don't  
21 even -- Mr. Taylor I guess she's talking about, who  
22 is not with Moore, Taylor & Thomas, I don't even  
23 know where he lives. I now know from the testimony  
24 that he lives in Quail Hollow. I don't hunt. I  
25 don't fish. And I certainly wouldn't discuss a

1 case in an inappropriate ex parte manner. I was  
2 taught by Professor Freeman, and I might not be the  
3 brightest light, but I know better than to do that.

4 So I don't know where that information  
5 came from, but I've never been there. I don't even  
6 know where his house is. And I think it's  
7 important -- and there are some other things that I  
8 can mention, but the thing that's most important  
9 about these line of hearings that have involved  
10 Mr. Gavin, I did retain jurisdiction because, as  
11 you have heard me state earlier, I try to do  
12 justice.

13 I thought it would be the type case  
14 that one judge keeping his thumbs on the pulse  
15 would be in a better position to fix. That  
16 certainly proved not to be the case, and the  
17 hearing that was not talked about particularly was  
18 the case of the 9th of November. I believe that's  
19 the date. I called a hearing less than a week  
20 after the previous hearing because, as corny as it  
21 sounds, I do go home and lose sleep. I do go home  
22 and study what I have done, and how it has impacted  
23 individuals involved in that particular case.

24 And Ms. Sirmon -- and that's  
25 S-I-R-M-O-N -- the probation agent, at the hearing

1 on the 2nd, I was a little pointed with her because  
2 that's about as far as I ever get is -- but I had  
3 to say something quickly because it was my  
4 impression that she was about to introduce  
5 something that I didn't think was appropriate, and  
6 so I stopped that. We went on with the hearing. I  
7 issued an order, as explained by Mr. Swerling and  
8 the victims, and then on my own motion, on my own  
9 motion, I called the hearing for -- a rehearing of  
10 that matter, and I placed many more restrictions on  
11 Mr. Gavin.

12 He could not even go in the area of his  
13 parents' home. He can't even go into that  
14 neighborhood. I had them bring -- I say I had  
15 them. Mr. Crocker, if he's still here --

16 MRS. CROCKER: He's still here.

17 JUDGE GOODE: -- he was kind enough to  
18 bring a plaque and it says -- it appeared to be a  
19 small subdivision on Lake Greenwood, and the Gavin  
20 family had about a five or an eight acre tract, and  
21 the others were more acre-ish type residential  
22 lots, and then those other lots -- there were a lot  
23 of young children.

24 And I just -- and there was great  
25 discussion between Mr. Harris who was representing

1 Mr. Gavin on that date, let him see his infirm  
2 parents. One has this. One has that. One is  
3 wheelchair bound. And I said under no  
4 circumstances could he go there, that what was more  
5 important -- he lived 11 miles away and indicated  
6 that there was a way to transport his parents to  
7 his home. That what was more important was that  
8 those children could go into their yard and to look  
9 out their windows and not have to worry that they  
10 were going to see him because just the sight of him  
11 from the testimony I had heard by that time would  
12 be frightful to them.

13 I put that restriction. I put tighter  
14 GPS monitoring than I think he had ever had before.  
15 I put him on curfew. These are -- some of these  
16 things I had not done before because he did have a  
17 crew of ten and was supporting two children, and  
18 the ramifications of putting him in jail and  
19 putting him out of business would have been  
20 multifold.

21 But I did I think -- and I had reduced  
22 his probation by a year. I reinstated that year,  
23 and I made it as tight as I could. And I  
24 relinquished jurisdiction because it was apparently  
25 something that my methods weren't doing their job.

1 I mean, I wasn't accomplishing what I had hoped to  
2 do to help him with his problems and protecting the  
3 victims, and so I relinquished jurisdiction, put  
4 him on a curfew.

5 He cannot go around his parents' home.  
6 And there's a back way and a front way, and he  
7 can't go either way. And if he sees any of the  
8 children, he is to vacate the premises and not be  
9 around them. I put it as tight as I could while  
10 still allowing him to make a living as a painter.  
11 And I haven't heard from him since then, but I felt  
12 like I had put as many restrictions as possible.

13 Of course counseling was still there,  
14 and -- but, anyway, that -- that was the last  
15 chapter. No one talked about that, but that's  
16 where we are now. There's no -- no hearing  
17 pending. He's in contact with his probation  
18 officer, and as far as I know, he's in compliance.  
19 But I would not be notified if he's not because I  
20 have -- you know, what I have tried to do to help  
21 everyone didn't work and I bowed out of the case.

22 Be happy to answer any questions.

23 CHAIRMAN McCONNELL: All right. Any  
24 questions?

25 SENATOR FORD: Judge --

1                   CHAIRMAN McCONNELL: The senator from  
2 Charleston.

3                   SENATOR FORD: -- I think you did -- I  
4 think you did a layman's job except one thing. The  
5 monitor system, like Senator Knotts and I said  
6 earlier, is simply outdated. GPS is no longer used  
7 basically. Everybody is going to satellite. If he  
8 was on satellite, we would know his every move at  
9 all times, and I think if -- in the future I hope  
10 you realize that GPS is a dinosaur and that you  
11 need to come up -- come up to the 21st century --  
12 22nd century.

13                  JUDGE GOODE: Well, I've been accused  
14 of that in a number of cases.

15                  SENATOR FORD: Well, you did a good job  
16 on the rehabilitation because Senator Knotts always  
17 tell me that we too nice in Charleston on these sex  
18 offenders. He -- he got a system where he showed  
19 me every sex -- sex offender in Lexington County --  
20 I mean, the whole county, his -- his district,  
21 Senator Cromer's district and Nikki Setzler's  
22 district. He got -- he got a monitor -- I mean, he  
23 got a system where he know where every one of them  
24 is, and so you -- you have -- you rehabilitate a  
25 guy for four years which is amazing, and I think



1     you should be -- I mean, I'm not -- I'm not, you  
2     know, bragging, but you did a wonderful job in  
3     bringing this man back to civilized America --

4             JUDGE GOODE: I tried.

5             SENATOR FORD: -- except for the  
6     monitoring. The next time use satellite  
7     monitoring, but if you call us, we'll help with you  
8     that.

9             JUDGE GOODE: Thank you. And I'm  
10    serious.

11            CHAIRMAN McCONNELL: Any other  
12    questions?

13            Thank you, sir.

14            Did you have something?

15            MS. SHULER: I do.

16            Just to follow up, who recommends the  
17    type of monitoring, satellite versus GPS? Is that  
18    within your jurisdiction or probation?

19            JUDGE GOODE: Well, it's in mine now.  
20    I didn't realize that there were two types.

21            SENATOR FORD: Oh, yes, sir. Yeah.

22            JUDGE GOODE: Well, I'm -- I'm -- I'm  
23    learning that tonight, and in the future whenever I  
24    order monitoring, it will be by a one-piece system.

25            SENATOR FORD: Yeah, satellite. That's

1     why you should spend more time in Charleston. You  
2     would be aware of these things. The county --  
3     Senator Knotts is not doing his job in the  
4     Midlands.

5                 JUDGE GOODE: Maybe you should talk  
6     with court administration, but talk to the folks in  
7     General Assembly first.

8                 CHAIRMAN McCONNELL: The senator from  
9     Lexington.

10                SENATOR KNOTTS: Let me ask you  
11     something, Judge Goode. When a sex offender  
12     comes -- the charge -- charges -- a person charged  
13     with sex offenses comes before a judge and the  
14     judge sentences him, does the sex offender -- once  
15     he's convicted, is he automatically put on the sex  
16     offender registry, or is it those -- does the judge  
17     have to write on his sentencing report that he will  
18     be registered -- he shall register as a sex  
19     offender?

20                JUDGE GOODE: It depends on the  
21     offense.

22                SENATOR KNOTTS: Okay. When any of the  
23     offenses that's listed in the law that comes under  
24     the sex offense, those are automatically -- that  
25     they're automatically have to register as a sex

1 offender or does the judge have to write on there  
2 "He shall register as a sex offender"?

3 JUDGE GOODE: Again, they're -- the  
4 best example I can think of quickly is assault and  
5 battery of a high and aggravated nature. It's  
6 within the judge's discretion whether or not to  
7 require registration as a sex offender.

8 SENATOR KNOTTS: That's if it was  
9 originally a charge involving sex, right?

10 JUDGE GOODE: That -- that's correct.  
11 But oftentimes like all matters of sentencing in  
12 the crimes, the solicitors will come back and "We  
13 don't want the registry. We just want you to  
14 sentence him on the charge," or her, as the case  
15 might be.

16 SENATOR KNOTTS: And that's part of the  
17 plea -- plea negotiation?

18 JUDGE GOODE: It can be, yes, sir.

19 SENATOR KNOTTS: Even though that it is  
20 a listed offense that must be registered according  
21 to the statute, solicitors are plea bargaining that  
22 down?

23 JUDGE GOODE: No, sir. I apparently  
24 did not make myself clear. On the ones that  
25 there's discretion -- and I mentioned ABHAN,

1 assault and battery high and aggravated. That is  
2 one that I know can -- it can be listed or not  
3 listed.

4 SENATOR KNOTTS: Okay. Thank you.

5 JUDGE GOODE: Thank you.

6 CHAIRMAN McCONNELL: Judge, let me  
7 follow up very quickly so we -- I can make sure I  
8 understand. On these criminal sexual conduct  
9 charges, the Court has no discretion on that  
10 registry; isn't that correct?

11 JUDGE GOODE: That's --

12 CHAIRMAN McCONNELL: All right. If  
13 I'm -- if they're convicted on that, they have to  
14 go in the registry?

15 JUDGE GOODE: Yes, sir, I think so.

16 CHAIRMAN McCONNELL: Okay. Anybody  
17 else have any questions?

18 All right. You --

19 JUDGE GOODE: Thank you so much from  
20 hearing from me.

21 CHAIRMAN McCONNELL: Yes, sir.

22 One more person. Call your next --

23 MS. SHULER: I'd like to call Roger  
24 Gaddy who is a physician.

25 CHAIRMAN McCONNELL: All right. Do you

1 swear to tell the truth, the whole truth, and  
2 nothing but the truth, so help you God?

3 DR. GADDY: I do.

4 CHAIRMAN McCONNELL: Thank you, sir.  
5 Please answer counsel's questions.

6 MS. SHULER: Dr. Gaddy, you have  
7 been -- you have known Judge Goode for 30 years.  
8 How long have you been his treating physician?

9 DR. GADDY: Oh, probably about 15.

10 MS. SHULER: All right. You have  
11 submitted an affidavit to the Commission. I'll  
12 have Ms. Traywick provide you with a copy.

13 DR. GADDY: Do you want this one?

14 MS. SHULER: That's fine. It's the  
15 same I think. Is that your affidavit?

16 DR. GADDY: Yes, ma'am.

17 MS. SHULER: I'd like to offer  
18 Dr. Gaddy's affidavit for the record.

19 CHAIRMAN McCONNELL: Is there any  
20 objection? Being none, so ordered.

21 (EXH. 22, Witness Affidavit Form of  
22 Roger A. Gaddy, marked for identification.)

23 MS. SHULER: In December 2008 you  
24 treated Judge Goode?

25 DR. GADDY: Correct.

1 MS. SHULER: And what did you find as a  
2 result of your treatment?

3 DR. GADDY: I -- whenever I saw him in  
4 mid December, he was having some complaints of  
5 fatigue ability, lethargy, and also some frequent  
6 urination, et cetera, and found that his blood  
7 sugar was elevated. I also did some other tests.  
8 Checked his thyroid which was normal, did an MRI of  
9 the brain to make sure he didn't have a brain tumor  
10 or stroke or something such as that, and also did  
11 a -- cardiac work on him, make sure he didn't have  
12 any coronary artery disease such as that that would  
13 be giving him fatigue ability.

14 MS. SHULER: Since December what has  
15 been the status of his health?

16 DR. GADDY: Well, once we got him on  
17 medicine and the proper diet, his blood sugars have  
18 come down. I guess whenever I saw him in mid  
19 December, they were around 355. They ought to be  
20 about 125, and since that time, we've got him on a  
21 regime where he checks his blood sugar twice a day,  
22 and it's running in the 120 to 140 range.

23 MS. SHULER: That's all I have for  
24 Dr. Gaddy.

25 CHAIRMAN McCONNELL: Any questions?

1                   The senator from Charleston.

2                   SENATOR FORD: I need your -- I need  
3 your card. It sounds like I need to see you  
4 myself.

5                   But, Doctor, do you know the caseload  
6 of judges in South Carolina?

7                   DR. GADDY: No, sir. I can tell you  
8 about the doctors.

9                   SENATOR FORD: Y'all got it made  
10 compared to judges.

11                  DR. GADDY: The lawyers are catching up  
12 fast.

13                  SENATOR FORD: I mean, we need about --  
14 we need at least 12 judges.

15                  DR. GADDY: I know the caseload is --  
16 is very overloaded, and I know they stay real busy.  
17 And what I know primarily is what I read in the  
18 paper.

19                  SENATOR FORD: You think that had  
20 something to do with Judge Goode?

21                  DR. GADDY: No -- you mean with his  
22 blood sugar being up?

23                  SENATOR FORD: Yeah.

24                  DR. GADDY: No, sir. I think it was  
25 probably more genetic factors. It kind of runs in

1 his family, and I think that's probably what the  
2 etiology was. I don't think it was related to his  
3 work schedule, although I'm sure if work schedule  
4 wasn't conducive to a good diet. I don't know how  
5 y'all are surviving tonight. I had to go --

6 SENATOR FORD: You attended --

7 DR. GADDY: -- I had to go get  
8 something to eat the break before last.

9 SENATOR FORD: You attended MUSC?

10 DR. GADDY: Beg your pardon?

11 SENATOR FORD: Did you attend MUSC?

12 DR. GADDY: Yes, sir.

13 SENATOR FORD: Okay. I need your card  
14 before you leave.

15 DR. GADDY: All right.

16 CHAIRMAN McCONNELL: Any other  
17 questions?

18 Representative Mack.

19 REPRESENTATIVE MACK: Thank you,  
20 Mr. Chairman.

21 About how long was Judge Goode running  
22 that high blood sugar around 350?

23 DR. GADDY: You know, there's no way to  
24 know. There's a blood test that we do other than  
25 checking the blood sugar called a hemoglobin A1c



1     that gives us about a four to six week average, and  
2     I checked that and also it was elevated.

3                 REPRESENTATIVE MACK:  Are you his  
4     regular physician that he goes to on a regular  
5     basis?

6                 DR. GADDY:  Yes, sir.

7                 REPRESENTATIVE MACK:  And he's never  
8     had that problem before?

9                 DR. GADDY:  Never -- he's had it  
10    borderline, but never -- never where he needed  
11    medicine or elevated to that degree.

12                CHAIRMAN McCONNELL:  Anything further?

13                SENATOR KNOTTS:  One more.

14                CHAIRMAN McCONNELL:  The senator from  
15    Lexington.

16                SENATOR KNOTTS:  Blood sugar, can --  
17    can it come on to you without you really knowing  
18    it --

19                DR. GADDY:  Oh, it certainly can.  
20    Usually if it comes on more acutely or it gets  
21    worse because your blood sugar goes up, it  
22    concentrates in your blood which filters through  
23    your kidneys that make you urinate more.  So you  
24    urinate more, drink more, drink more, urinate more,  
25    and you just -- it's one of -- one of the symptoms.

1 But it's not uncommon for your blood sugars to be  
2 up and not really be aware of it if happens very  
3 gradually.

4 One of the things that we do in  
5 medicine is that we -- you know, people are more  
6 concerned about cholesterol if they feel pretty  
7 good. Well, if you check their cholesterol and you  
8 find their triglycerides are up, a lot of times the  
9 triglycerides will be elevated as -- as a result of  
10 their abnormal glucose metabolism. So then you  
11 check them for diabetes, and lo and behold they've  
12 got diabetes, and they didn't know it and you  
13 didn't know it. You just kind of found out because  
14 the triglycerides were up and they're -- you're  
15 going to have a higher index of suspicion.

16 So it's very easy to have it, and  
17 there's probably a significant number of people  
18 that are walking the streets that have it that  
19 don't know it.

20 CHAIRMAN McCONNELL: Any further  
21 questions?

22 Thank you, Doctor.

23 You had three questions left for Judge  
24 Goode?

25 MS. SHULER: Yes, I do.

1 CHAIRMAN McCONNELL: Judge Goode, if  
2 you'd come forward one more time.

3 JUDGE GOODE: I'm sorry.

4 CHAIRMAN McCONNELL: No, I dismissed  
5 you and then she told me that she had three more  
6 questions.

7 MS. SHULER: All right.

8 JUDGE GOODE: Yes, ma'am.

9 MS. SHULER: Judge Goode, I have three  
10 questions for you.

11 First, several times today you  
12 indicated that after reflection you believe the  
13 sentence -- sentencing of Ms. Smith may have been  
14 too light. I guess as a subpart of that, do you  
15 understand that some persons hearing you discuss  
16 your thoughts about reconsideration may conclude  
17 you intend to resentence her to some jail time?

18 JUDGE GOODE: If -- if that was the  
19 language that I used -- and I of course -- we could  
20 check the transcript, but I don't think it was --  
21 my recollection is that I said that it was an  
22 appropriate case for review and was attempting to  
23 be careful, not up, not down, but that it was a  
24 case after reading the transcript that I felt that  
25 likely would be appropriate to be reviewed.

1                   And I have tried not to indicate up or  
2 down, just that there's evidence in there. I'm  
3 certain there will be a motion made to supplement  
4 the record in the form of medical documentation.  
5 We'll just have to see how that ball rolls, but I  
6 hope no one gets that impression because that was  
7 the impression I meant -- I meant to lend. It was  
8 simply that it's an appropriate case for  
9 reconsideration after -- of course a motion to  
10 reconsider has to be heard first.

11                   MS. SHULER: As a follow-up, do you  
12 think you can be fair and impartial after -- given  
13 all the testimony today to hear that motion for  
14 reconsideration?

15                   JUDGE GOODE: Absolutely.

16                   MS. SHULER: All right. Would you --

17                   JUDGE GOODE: I'll be happy to have it  
18 assigned to someone else if the parents or the  
19 solicitor or anyone would be more comfortable with  
20 a different judge, but I do not think that I have  
21 heard or seen anything that would keep me from  
22 being fair and impartial.

23                   MS. SHULER: Let me clarify your  
24 answer. If one of the parties made a motion that  
25 another judge would hear the motion for

1 reconsideration, would you be willing to consider  
2 granting that motion?

3 JUDGE GOODE: I would certainly hear --  
4 hear their reasons, and if they have a good factual  
5 basis for that, I would -- but, again, it's opinion  
6 matter, and as I -- my cohort and solicitor we're  
7 limited in what we can say, but I would certainly  
8 consider that.

9 MS. SHULER: Thank you, Judge Goode.

10 Judge Goode, over 49 affidavits have  
11 been submitted in support of your candidacy, many  
12 of which are from criminal defense attorneys, as  
13 well as a resolution on your behalf from the  
14 Lancaster County Bar. Judge Goode, are you able to  
15 still be impartial and not accord any favoritism to  
16 any of the attorneys who submitted affidavits on  
17 your behalf when they subsequently appear in your  
18 courtroom on a matter?

19 JUDGE GOODE: Yes, ma'am. That  
20 wouldn't be a problem. We have one law school.  
21 I'm from a small circuit. I travel. It's the same  
22 solicitors typically on each visit, and it's not  
23 unusual for me to have a personal -- nothing  
24 inappropriate, but a personal relationship with the  
25 folks who handle cases in front of me. And if I

1 ever felt that my relationship with any person  
2 would influence my ability to be fair and  
3 impartial, I would recuse myself.

4 And I have recused myself. I recently  
5 recused myself from a case because I knew the  
6 people on one side too well and didn't feel like I  
7 could -- could be fair.

8 MS. SHULER: Thank you, Judge Goode.

9 Last question. Do you believe if  
10 reelected to the circuit court bench that you could  
11 still act impartially towards any lawyer,  
12 legislator who appears before you?

13 JUDGE GOODE: Oh, yes, ma'am. It -- it  
14 may seem strange, but I've heard of the fog of  
15 grief, but when you get into a courtroom, you get  
16 so encapsulated in what's going on. If you're  
17 serious about your job, you -- you really lose  
18 sight of the things around you and you concentrate  
19 on the facts and issues that are before you.

20 Just as I pointed out to Senator  
21 McConnell with me rubbing my face and that  
22 sometimes I'll turn sideways in the chair, it's  
23 because it's an unconscious -- I'm thinking, you  
24 know, what can I do that would be the right thing  
25 in this case. But I could be fair, and would be,

1 and have been.

2 MS. SHULER: Thank you, Judge Goode.

3 SENATOR FORD: One question.

4 Judge, there's another law school in  
5 South Carolina. We have --

6 JUDGE GOODE: Now. I've got a son  
7 there.

8 SENATOR FORD: Don't -- don't -- don't  
9 forget that now.

10 Welcome to Charleston.

11 I think that would be too much pressure  
12 if you would --

13 JUDGE GOODE: I don't think I could  
14 hear his case.

15 SENATOR FORD: No, I don't mean that.  
16 I was talking about the other case. That would be  
17 too much pressure.

18 JUDGE GOODE: Which one is that?

19 SENATOR FORD: The case we've been  
20 discussing all day. The retrial -- not the  
21 retrial, resentencing.

22 JUDGE GOODE: If the committee would be  
23 desirous of my relinquishing jurisdiction over that  
24 case, I -- I have no problem with that. I'm not  
25 married to that case. I did the best I could with

1 it. Someone else hopefully could do a better job.

2 SENATOR FORD: Well, I wouldn't want  
3 you to get to that pressure. That's just my  
4 personal opinion.

5 JUDGE GOODE: Yes, sir. Well, that's  
6 part of the job, but I could be fair and --

7 CHAIRMAN McCONNELL: Thank you, sir.

8 JUDGE GOODE: Thank you. Again, I  
9 thank you all for allowing me to speak.

10 CHAIRMAN McCONNELL: Now, as I  
11 understand it, counsel, that concludes everything  
12 that -- the testimony. I would ask the panel at  
13 this point if this would be a satisfactory way to  
14 proceed. To ask the staff -- we all have the  
15 exhibits, anything you want.

16 Ask the staff to begin to draft for us  
17 a report to give back to the Joint Assembly, that  
18 that draft be circulated amongst the committee, and  
19 that after you've had a chance to review that,  
20 we'll make the collective decision as to whether we  
21 need to get together and -- to discuss it or  
22 whether or not we're satisfied with the text. And  
23 you'll have an opportunity, each of you, to make  
24 any comments to the staff, and then if we reach a  
25 point that we need to get together collectively to



1 make decisions on the text of it, that we would do  
2 so.

3 Is -- is that satisfactory with  
4 everyone to proceed on that basis?

5 (The Judicial Merit Selection Committee  
6 answered in the affirmative.)

7 CHAIRMAN McCONNELL: All right. And  
8 what we would do is ask the staff -- I know they  
9 don't have enough to do. I'm saying that --  
10 they're swamped -- to proceed to put this report  
11 together, that when we receive -- we will stand in  
12 recess. If -- if there is not a need, then this  
13 hearing will be adjourned pursuant to the  
14 resolution. If we are unable to resolve among  
15 ourselves the text of it, then we will reserve the  
16 right to reconvene and to resolve any differences  
17 in that report.

18 With that, thank you all for coming and  
19 have a good evening.

20 (The hearing was concluded at  
21 8:58 p.m.)

22

23

24

25


## 1 CERTIFICATE OF REPORTER

2 I, Yvonne R. Bohannon, Registered Merit  
3 Reporter, Certified Realtime Reporter, and Notary  
4 Public for the State of South Carolina at Large, do  
5 hereby certify:

6 That the foregoing transcript was taken  
7 before me on the date and at the time and location  
8 stated on page 1 of this transcript; that all  
9 statements made on the record at the time of the  
10 proceeding were recorded stenographically by me and  
11 were thereafter transcribed; that the foregoing  
12 proceeding as typed is a true, accurate and  
13 complete record of the proceeding to the best of my  
14 ability.

15 I further certify that I am neither  
16 related to nor counsel for any party to the cause  
17 pending or interested in the events thereof.

18 Witness my hand, I have hereunto  
19 affixed my official seal this 23rd day of  
20 February, 2008, at Columbia, Richland  
21 County, South Carolina.

22   
23 Yvonne R. Bohannon  
24 Registered Merit  
25 Reporter, CRR  
My Commission expires  
April 11, 2015



1	I N D E X	
2		Page
3	OPENING REMARKS BY CHAIRMAN McCONNELL	3
4	OPENING REMARKS BY JUDGE GOODE	
5	GENERAL QUESTIONING OF JUDGE GOODE FROM MS. SHULER	15
6	STATE VS. TALISHA LAVETTE SMITH	
7	JUDGE GOODE	17
	PATRICK GADDIE	36
8	MICHELLE GADDIE	51
	MARGARET FENT	86
9	JERRY FINNEY	114
	PAUL NEWELL	122
10	JUDGE GOODE	133
	JERRY FINNEY	175
11		
12	STATE VS. ZAIL RAY GAVIN	
	JUDGE GOODE	186
13	BARRY CROCKER	190
	AMY HILLEY	194
14	INGRID CAROL LEE	200
15	STATE VS. TALISHA LAVETTE SMITH	
16	MARGARET FENT	213
	JUDGE GOODE	245
17		
18	STATE VS. ZAIL RAY GAVIN	
	HEATH TAYLOR	247
19	JACK SWERLING	266
	STACY CROCKER	310
20	JACK SWERLING	314
	JUDGE GOODE	315
21	ROGER GADDY, M.D.	324
22		
23	GENERAL QUESTIONING OF JUDGE GOODE FROM MS. SHULER	330
24	CERTIFICATE OF REPORTER	338
25		

1	E X H I B I T S		
2			
3	1	Transcript of Record for State vs. Talisha Lavette Smith Dated December 8, 2008	18
4	2	Sentence Sheet for State vs. Talisha Lavette Smith	19
5	3	Witness Affidavit Form of Patrick E. Gaddie	37
6	4	Witness Affidavit Form of Michelle A. Gaddie	52
7	5	Affidavit of Jerry Leo Finney	115
8	6	Motion to Reconsider Sentence for State vs. Talisha Lavette Smith	119
9			
10	7	2/12/2009 E-Mail From Jane Shuler to Judge Goode	150
11	8	February 19, 2009, Letter From Richland County Clerk of Court	159
12	9	Transcript of zail gavin_1.txt	186
13	10	Transcript of Record for State of South Carolina vs. Zail Gavin Dated February 9, 2009	188
14			
15	11	Sentencing Sheets and Orders for State vs. Zail Ray Gavin	189
16	12	Witness Affidavit Form of Barry Judson Crocker and Stacy Aldrich Crocker	191
17			
18	13	Witness Affidavit Form of Amy Elizabeth Hilley	195
19	14	Witness Affidavit Form of Ingrid Carol Lee	201
20	15	Affidavit of Heath P. Taylor	248
21	16	Transcript of Record for State vs. Zail Gavin Dated May 27, 2008	286
22	17	Expungement for State Vs. Zail Gavin	288
23	18	Violation Report for State vs. Zail Gavin	289
24	(Exhibits continued.)		
25			

2/19/2009

		341
1	19 Affidavit of Jack B. Swerling	289
2	20 Order for State vs. Zail Gavin	310
3	21 October 3, 2008, Letter to Mr. Jack Swirling From Connye M. Post	310
4	22 Witness Affidavit Form of Roger A. Gaddy	325
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
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